INDIANOLA MUNICIPAL UTILITIES

IMU

Electric • Communications • Water

**IMU BOARD OF TRUSTEES OF THE ELECTRIC, WATER AND COMMUNICATIONS UTILITIES**

September 12, 2022
5:30 PM
City Hall Council Chambers
110 N 1st Street
Agenda

1. **Call to Order**
2. **Roll Call**
3. **Public Comment**
4. **Consent Agenda:**
   A. Approval of Claims
   B. Approval of the July 2022 Financial Reports
   C. Approval of Minutes of the prior board meetings
5. **Electric Utility Action Items**
   A. Discussion and direction regarding support for CMPPA Investments in additional transmission investment.
6. **Electric Utility Informational Items**
7. **Water Utility Action Items**
8. **Water Utility Informational Items**
9. **Communications Utility Action Items**
   A. Fiber Financing Results Presentation (Series 2022A/B)
   B. Resolution providing for the issuance and securing the payment of future Obligations for the purposes of borrowing money for Indianola Municipal Utilities.
   C. Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of Communications Revenue and Refunding Notes, Series 2022A, and other documents related to the notes.
   D. Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of taxable Communications Revenue Refunding Notes, Series 2022B and other documents related to the notes.
   E. Resolution setting a public hearing and letting dates for the Fiber 2022-NOFA7-Phase 1 project.

F. Consideration of the approval of the Certificate of Final Completion of the Fiber Network Extension to Water Resource Recovery Facility Project and the issuance of a hand written warrant for $29,547.65 to Murphy Tower Services.

**10. Communications Utility Informational Items**

**11. Combined Electric, Water and Communications Action Items**

A. Consideration of the approval of a purchase power agreement with SE Municipal Iowa, LLC.

B. Consideration of the approval of a lease and easement agreement for solar energy system.

**12. Combined Electric, Water and Communications Informational Items**

**13. Other Business**

A. Enter into closed session in accordance with Iowa Code Section 388.9(1) to discuss marketing and pricing strategies and proprietary information of the telecommunications division whose competitive position will be harmed by public disclosure that is not required of potential or actual competitors and no public purpose is served by such disclosure.

**14. Adjourn**

INDIANOLA MUNICIPAL UTILITIES
Electric • Communications • Water

4.A.

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Approval of Claims

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**Recommendation:** Simple motion is in order.

**Attachments:** 1. 091322 Elation Claims List

| Vendor / Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| **Account To Be Paid From** | **0000-10120-999** | | | | | | | | |
| **ACCO UNLIMITED CORP. - VEND-2810** | | | | | | | | | |
| 8/25/2022 | ACCO liquid chlorinating | Open Terms | 1,819.40 | 0.00 | 0.00 | 1,819.40 | 1,819.40 | 0225705-IN | BL-9153 |
| | | | | | | **1,819.40** | **1,819.40** | | |
| **Ahlers & Cooney P.C. - VEND-1002** | | | | | | | | | |
| 9/30/2022 | Legal services - EL | Net 30 | 357.50 | 0.00 | 15.00 | 357.50 | 357.50 | 829263 | BL-9164 |
| | | | | | | **357.50** | **357.50** | | |
| **American Water Works Association - VEND-1184** | | | | | | | | | |
| 8/31/2022 | Membership renewal | Net 30 | 259.00 | 0.00 | 15.00 | 259.00 | 259.00 | 7002039407 | BL-9166 |
| | | | | | | **259.00** | **259.00** | | |
| **Bally Sports Midwest - VEND-1222** | | | | | | | | | |
| 9/24/2022 | EXP Basic | Net 30 | 4,566.88 | 0.00 | 15.00 | 4,566.88 | 4,566.88 | U30754 | BL-9140 |
| | | | | | | **4,566.88** | **4,566.88** | | |
| **Big Ten Network - VEND-1096** | | | | | | | | | |
| 9/30/2022 | BTN | Net 30 | 1,837.70 | 0.00 | 15.00 | 1,837.70 | 1,837.70 | 167582 | BL-9135 |
| | | | | | | **1,837.70** | **1,837.70** | | |
| **Border States Industries Inc - VEND-1070** | | | | | | | | | |
| 9/15/2022 | 2" and 3" PVC Couplings | Net 30 | 71.87 | 0.00 | 15.00 | 71.87 | 71.87 | 924763612 | BL-9072 |
| 9/15/2022 | 3" PVC Sweeps | Net 30 | 588.05 | 0.00 | 15.00 | 588.05 | 588.05 | 924763609 | BL-9073 |
| 9/16/2022 | Capacitors | Net 30 | 1,935.42 | 0.00 | 15.00 | 1,935.42 | 1,935.42 | 924772476 | BL-9093 |
| 9/23/2022 | 125 Amp Fuses | Net 30 | 169.17 | 0.00 | 15.00 | 169.17 | 169.17 | 924815450 | BL-9071 |
| | | | | | | **2,764.51** | **2,764.51** | | |
| **Calix Inc - VEND-1028** | | | | | | | | | |
| 7/30/2022 | ROUTER - GS4220E | Net 30 | 21,700.23 | 0.00 | 15.00 | 21,700.23 | 21,700.23 | 299622 | BL-9160 |
| 9/24/2022 | ONT - 803G | Net 30 | 6,442.17 | 0.00 | 15.00 | 6,442.17 | 6,442.17 | 306544 | BL-9158 |
| 9/25/2022 | Support cloud, customer success, managemer | Net 30 | 32,847.50 | 0.00 | 15.00 | 32,847.50 | 32,847.50 | 4035965 | BL-9059 |
| | | | | | | **60,989.90** | **60,989.90** | | |
| **Cedar Falls Utilities - VEND-1045** | | | | | | | | | |
| 10/6/2022 | Labor and rack space | Net 30 | 5,422.90 | 0.00 | 15.00 | 5,422.90 | 5,422.90 | 92337 | BL-9143 |
| | | | | | | **5,422.90** | **5,422.90** | | |
| **Chew Plumbing Company - VEND-1332** | | | | | | | | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| 9/11/2022 | Exterior sewer, water storm work | Net 30 | 3,994.00 | 0.00 | 15.00 | 3,994.00 | 3,994.00 | 2228 | BL-9171 |
| | | | | | | **3,994.00** | **3,994.00** | | |
| **Cintas Corporation - VEND-1007** | | | | | | | | | |
| 9/11/2022 | 1st aid supplies | Net 30 | 86.32 | 0.00 | 15.00 | 86.32 | 86.32 | 8405830728 | BL-9077 |
| | | | | | | **86.32** | **86.32** | | |
| **CIRCLE B CASHWAY - VEND-8615** | | | | | | | | | |
| 8/23/2022 | 2x6's | Open Terms | 33.41 | 0.00 | 0.00 | 33.41 | 33.41 | 879781 | BL-9022 |
| | | | | | | **33.41** | **33.41** | | |
| **City Of Indianola - VEND-1008 - BL-9024** | | | | | | | | | |
| 9/21/2022 | July 2022 Caselle Claims | Net 30 | 7,884.70 | 0.00 | 15.00 | 7,884.70 | 7,884.70 | July 2022 Caselle Claims | BL-9024 |
| | | | | | | **7,884.70** | **7,884.70** | | |
| **City Of Indianola - VEND-1008 - BL-9037** | | | | | | | | | |
| 9/16/2022 | Square streetscape project - pay app 13 | Net 30 | 1,211.25 | 0.00 | 15.00 | 1,211.25 | 1,211.25 | 2936 | BL-9037 |
| | | | | | | **1,211.25** | **1,211.25** | | |
| **City Of Indianola - VEND-1008 - BL-9148** | | | | | | | | | |
| 10/1/2022 | 0922 Professional Services | Net 30 | 12,122.17 | 0.00 | 15.00 | 12,122.17 | 12,122.17 | 2952 | BL-9148 |
| | | | | | | **12,122.17** | **12,122.17** | | |
| **Communication Innovators - VEND-1329** | | | | | | | | | |
| 9/22/2022 | Labor and material for video system | Net 30 | 2,635.00 | 0.00 | 15.00 | 2,635.00 | 2,635.00 | 108976 | BL-9105 |
| | | | | | | **2,635.00** | **2,635.00** | | |
| **Consortia Consulting - VEND-1009** | | | | | | | | | |
| 9/25/2022 | Consulting | Net 30 | 1,807.50 | 0.00 | 15.00 | 1,807.50 | 1,807.50 | 23953 | BL-9099 |
| | | | | | | **1,807.50** | **1,807.50** | | |
| **CORE & MAIN - VEND-102636** | | | | | | | | | |
| 8/6/2022 | 6 MJ Cross C153 Imp | Open Terms | 72.85 | 0.00 | 0.00 | 72.85 | 72.85 | R344372 & R411080 | BL-9025 |
| 8/6/2022 | Pipes, gaskets, connectors | Open Terms | 9,759.00 | 0.00 | 0.00 | 9,759.00 | 9,759.00 | R343991 | BL-9027 |
| 8/18/2022 | 6 MJ Regular gasket | Open Terms | 33.00 | 0.00 | 0.00 | 33.00 | 33.00 | R377521 | BL-9028 |
| 8/25/2022 | Saddles, coupling, pipe and curb stop | Open Terms | 765.00 | 0.00 | 0.00 | 765.00 | 765.00 | R444520 | BL-9151 |
| 9/1/2022 | 1" X 3/4 Comp Coupling and Flare Coupling 1" | Open Terms | 197.80 | 0.00 | 0.00 | 197.80 | 197.80 | R444411 | BL-9150 |
| | | | | | | **10,827.65** | **10,827.65** | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| **CROSSROADS MOBILE MAINTENANCE - VEND-102507** | | | | | | | | | |
| 8/6/2022 | Unit 30 repairs | Open Terms | 2,084.84 | 0.00 | 0.00 | 2,084.84 | 2,084.84 | 202S3407 | BL-9126 |
| 8/6/2022 | Unit 31 repairs | Open Terms | 337.05 | 0.00 | 0.00 | 337.05 | 337.05 | 202S3408 | BL-9128 |
| | | | | | | **2,421.89** | **2,421.89** | | |
| **Crystal Clear Communications LLC - VEND-1205** | | | | | | | | | |
| 10/1/2022 | Monthly retainer and stock photography | Net 30 | 2,549.00 | 0.00 | 15.00 | 2,549.00 | 2,549.00 | CCC-0312 | BL-9156 |
| | | | | | | **2,549.00** | **2,549.00** | | |
| **Des Moines Register Media - VEND-1010** | | | | | | | | | |
| 8/30/2022 | BOT minutes | Net 30 | 162.82 | 0.00 | 15.00 | 162.82 | 162.82 | 4823832 | BL-9019 |
| | | | | | | **162.82** | **162.82** | | |
| **DES PLANQUES, CHRIS - VEND-101766** | | | | | | | | | |
| 8/20/2022 | MEAN meetings | Open Terms | 417.50 | 0.00 | 0.00 | 417.50 | 417.50 | | BL-9033 |
| 9/2/2022 | 0922 Cel Phone | Open Terms | 75.00 | 0.00 | 0.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9049 |
| | | | | | | **492.50** | **492.50** | | |
| **Ditch Witch - VEND-1115** | | | | | | | | | |
| 9/17/2022 | Locator repairs | Net 30 | 260.15 | 0.00 | 15.00 | 260.15 | 260.15 | S26147 | BL-9074 |
| 9/17/2022 | Locator repairs | Net 30 | 292.64 | 0.00 | 15.00 | 292.64 | 292.64 | S26148 | BL-9075 |
| 10/1/2022 | Locator clamp | Net 30 | 776.33 | 0.00 | 15.00 | 776.33 | 776.33 | S26336 | BL-9129 |
| | | | | | | **1,329.12** | **1,329.12** | | |
| **Doug Pagel - VEND-1283** | | | | | | | | | |
| 10/1/2022 | 0922 Cel Phone | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9050 |
| | | | | | | **75.00** | **75.00** | | |
| **Doug Shull - VEND-1105** | | | | | | | | | |
| 10/1/2022 | 0922 Treasury Contract | Net 30 | 83.34 | 0.00 | 15.00 | 83.34 | 83.34 | 0922 Treasury Contract | BL-9041 |
| | | | | | | **83.34** | **83.34** | | |
| **Duerson Corporation - VEND-1331** | | | | | | | | | |
| 10/1/2022 | Service call on buildings to cover and seal gap | Net 30 | 1,288.55 | 0.00 | 15.00 | 1,288.55 | 1,288.55 | 34805 | BL-9118 |
| | | | | | | **1,288.55** | **1,288.55** | | |
| **Dust Pros Janitorial - VEND-1011** | | | | | | | | | |
| 9/18/2022 | FR laundry detergent | Net 30 | 104.86 | 0.00 | 15.00 | 104.86 | 104.86 | 2606 | BL-9078 |

| Vendor / Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | **104.86** | **104.86** | | |
| **Dylan Michelsen - VEND-1180** | | | | | | | | | |
| 10/1/2022 | 0922 Cel Phone | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9045 |
| | | | | | | **75.00** | **75.00** | | |
| **Elisha Brown - VEND-1209** | | | | | | | | | |
| 10/1/2022 | 0922 Cel Phone | Net 30 | 50.00 | 0.00 | 15.00 | 50.00 | 50.00 | 0922 Cel Phone | BL-9048 |
| | | | | | | **50.00** | **50.00** | | |
| **Fuse Technic LLC - VEND-1012** | | | | | | | | | |
| 10/1/2022 | Isolation routing and troubleshooting | Net 30 | 225.00 | 0.00 | 15.00 | 225.00 | 225.00 | FT20220901004 | BL-9110 |
| | | | | | | **225.00** | **225.00** | | |
| **GRAYBAR - VEND-19900** | | | | | | | | | |
| 8/10/2022 | 1/2" INNER DUCT | Open Terms | 6,458.52 | 0.00 | 0.00 | 6,458.52 | 6,458.52 | 9328143566 | BL-9058 |
| | | | | | | **6,458.52** | **6,458.52** | | |
| **GRAYMONT WESTERN LIME INC - VEND-101387** | | | | | | | | | |
| 8/22/2022 | High calcium quicklime | Open Terms | 5,090.70 | 0.00 | 0.00 | 5,090.70 | 5,090.70 | 174738 | BL-9152 |
| | | | | | | **5,090.70** | **5,090.70** | | |
| **HACH COMPANY - VEND-20810** | | | | | | | | | |
| 8/10/2022 | Tubing kit | Open Terms | 244.16 | 0.00 | 0.00 | 244.16 | 244.16 | 13184784 | BL-9030 |
| | | | | | | **244.16** | **244.16** | | |
| **Hearst Television Inc - VEND-1131** | | | | | | | | | |
| 9/30/2022 | KCCI | Net 30 | 5,796.30 | 0.00 | 15.00 | 5,796.30 | 5,796.30 | 456422 | BL-9119 |
| | | | | | | **5,796.30** | **5,796.30** | | |
| **ImOn Communications LLC - VEND-1072** | | | | | | | | | |
| 9/30/2022 | Regulatory & Billing | Net 30 | 7,039.25 | 0.00 | 15.00 | 7,039.25 | 7,039.25 | INV0033603 | BL-9114 |
| | | | | | | **7,039.25** | **7,039.25** | | |
| **Impact - VEND-1141 - BL-9084** | | | | | | | | | |
| 9/2/2022 | Refund For Overpayment On Talitha Johnson | Net 30 | 205.78 | 0.00 | 0.00 | 205.78 | 205.78 | 00033351-3 | BL-9084 |
| | | | | | | **205.78** | **205.78** | | |
| **Impact - VEND-1141 - BL-9157** | | | | | | | | | |
| 10/7/2022 | Refund For Overpayment On Betsy Gritts | Net 30 | 46.32 | 0.00 | 15.00 | 46.32 | 46.32 | 00037468-1 | BL-9157 |

| Vendor Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | **46.32** | **46.32** | | |
| **IMU - VEND-8629** | | | | | | | | | |
| 9/2/2022 | Utilities - WA | Open Terms | 16,381.69 | 0.00 | 0.00 | 16,381.69 | 16,381.69 | 10224513 | BL-9165 |
| 9/2/2022 | Utilities - EL | Open Terms | 1,655.32 | 0.00 | 0.00 | 1,655.32 | 1,655.32 | 10222989 | BL-9124 |
| 9/2/2022 | Utilities - Fiber | Open Terms | 2,006.01 | 0.00 | 0.00 | 2,006.01 | 2,006.01 | 10229520 | BL-9111 |
| 9/2/2022 | Utilities - Util Svcs | Open Terms | 346.23 | 0.00 | 0.00 | 346.23 | 346.23 | 10226261 | BL-9106 |
| | | | | | | **20,389.25** | **20,389.25** | | |
| **IMWCA - VEND-1130** | | | | | | | | | |
| 10/1/2022 | Premiums - Installment 3 | Net 30 | 2,957.14 | 0.00 | 15.00 | 2,957.14 | 2,957.14 | INV84371 | BL-9137 |
| | | | | | | **2,957.14** | **2,957.14** | | |
| **Independent Advocate - VEND-1136** | | | | | | | | | |
| 9/17/2022 | BOT minutes | Net 30 | 331.08 | 0.00 | 15.00 | 331.08 | 331.08 | 2316 | BL-9035 |
| | | | | | | **331.08** | **331.08** | | |
| **Infomax Office Systems Inc - VEND-1013** | | | | | | | | | |
| 9/14/2022 | Copier contract | Net 30 | 750.20 | 0.00 | 15.00 | 750.20 | 750.20 | 32228002 | BL-9034 |
| | | | | | | **750.20** | **750.20** | | |
| **Innovative Systems - VEND-1048** | | | | | | | | | |
| 10/1/2022 | 0922 Maint/Software Fees | Net 30 | 22,435.56 | 0.00 | 15.00 | 22,435.56 | 22,435.56 | INV-005202 | BL-9161 |
| 10/7/2022 | 0922 Printing, Postage & Flyer | Net 30 | 6,286.89 | 0.00 | 15.00 | 6,286.89 | 6,286.89 | INV-05463 | BL-9167 |
| | | | | | | **28,722.45** | **28,722.45** | | |
| **Internal Revenue Service - VEND-1307** | | | | | | | | | |
| 10/2/2022 | 090222 Payroll | Net 30 | 25,856.36 | 0.00 | 15.00 | 25,856.36 | 25,856.36 | 090222 Payroll | BL-9147 |
| | | | | | | **25,856.36** | **25,856.36** | | |
| **Interstate Power Systems Inc - VEND-1033** | | | | | | | | | |
| 1/12/2022 | Service Call | Net 30 | 115.42 | 0.00 | 15.00 | 115.42 | 115.42 | R012080081 x 2 | BL-9169 |
| 7/20/2022 | Service Call | Net 30 | 853.63 | 0.00 | 15.00 | 853.63 | 853.63 | R012079311 x 2 | BL-9168 |
| 10/7/2022 | Service Call | Net 30 | 26.11 | 0.00 | 15.00 | 26.11 | 26.11 | R012080793 x 2 | BL-9170 |
| | | | | | | **995.16** | **995.16** | | |
| **Iowa Department Of Human Services - VEND-1310** | | | | | | | | | |
| 10/2/2022 | 090222 Payroll | Net 30 | 1,040.99 | 0.00 | 15.00 | 1,040.99 | 1,040.99 | 090222 Payroll | BL-9146 |
| | | | | | | **1,040.99** | **1,040.99** | | |
| **Iowa Dept Of Revenue - VEND-1117** | | | | | | | | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| 10/1/2022 | 090222 Payroll | Net 30 | 4,484.01 | 0.00 | 15.00 | 4,484.01 | 4,484.01 | 090222 Payroll | BL-9144 |
| 10/1/2022 | Sales Tax Billed 9-1-22 | Net 30 | 61,700.22 | 0.00 | 15.00 | 61,700.22 | 61,700.22 | Sales Tax Billed 9-1-22 | BL-9163 |
| | | | | | | **66,184.23** | **66,184.23** | | |
| **Iowa One Call - VEND-1015** | | | | | | | | | |
| 9/17/2022 | Locates | Net 30 | 426.60 | 0.00 | 15.00 | 426.60 | 426.60 | 244304 | BL-9023 |
| 9/17/2022 | Locates | Net 30 | 220.50 | 0.00 | 15.00 | 220.50 | 220.50 | 244303 | BL-9098 |
| 9/17/2022 | Locates | Net 30 | 388.80 | 0.00 | 15.00 | 388.80 | 388.80 | 243686 | BL-9079 |
| | | | | | | **1,035.90** | **1,035.90** | | |
| **Iowa Radio Plus - VEND-1223** | | | | | | | | | |
| 9/27/2022 | Web ads | Net 30 | 28.56 | 0.00 | 15.00 | 28.56 | 28.56 | 22080663 | BL-9116 |
| | | | | | | **28.56** | **28.56** | | |
| **Iowa Utilities Board - VEND-1016** | | | | | | | | | |
| 7/14/2022 | Docket E-20893 | Net 30 | 382.00 | 0.00 | 15.00 | 382.00 | 382.00 | 55402 | BL-9095 |
| 9/22/2022 | Docket E-20893 | Net 30 | 69.85 | 0.00 | 15.00 | 69.85 | 69.85 | 55636 | BL-9096 |
| 9/22/2022 | IUB/OCA FY22 4th Qtr Assessment | Net 30 | 516.95 | 0.00 | 15.00 | 516.95 | 516.95 | 55556 | BL-9020 |
| | | | | | | **968.80** | **968.80** | | |
| **Irby - VEND-1259** | | | | | | | | | |
| 9/1/2022 | Primary Cabinets | Net 30 | 1,562.20 | 0.00 | 15.00 | 1,562.20 | 1,562.20 | S013125179.001 | BL-9086 |
| 9/9/2022 | #2 Hand Coil Triplex | Net 30 | 411.95 | 0.00 | 15.00 | 411.95 | 411.95 | S013132022.001 | BL-9091 |
| | | | | | | **1,974.15** | **1,974.15** | | |
| **KELLER'S GARAGE - VEND-102525** | | | | | | | | | |
| 8/13/2022 | Oil change | Open Terms | 158.53 | 0.00 | 0.00 | 158.53 | 158.53 | 22837 | BL-9032 |
| 9/1/2022 | Oil change | Open Terms | 55.54 | 0.00 | 0.00 | 55.54 | 55.54 | 22958 | BL-9154 |
| | | | | | | **214.07** | **214.07** | | |
| **KNIA/KRLS - VEND-1090** | | | | | | | | | |
| 9/27/2022 | :30 Spots | Net 30 | 634.32 | 0.00 | 15.00 | 634.32 | 634.32 | 22080580 | BL-9117 |
| | | | | | | **634.32** | **634.32** | | |
| **Kurt Gocken - VEND-1023** | | | | | | | | | |
| 10/1/2022 | 0922 Cel Phone | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9042 |
| | | | | | | **75.00** | **75.00** | | |
| **Kurt Ripperger - VEND-1025** | | | | | | | | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| 10/1/2022 | 0922 Cel Phone | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9043 |
| | | | | | | **75.00** | **75.00** | | |
| **LOGAN CONTRACTORS SUPPLY INC. - VEND-32620** | | | | | | | | | |
| 9/3/2022 | Concrete tools | Open Terms | 92.68 | 0.00 | 0.00 | 92.68 | 92.68 | B02132 | BL-9133 |
| | | | | | | **92.68** | **92.68** | | |
| **LONGER, CHRIS - VEND-34025** | | | | | | | | | |
| 9/2/2022 | 0922 Cel Phone | Open Terms | 75.00 | 0.00 | 0.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9046 |
| | | | | | | **75.00** | **75.00** | | |
| **Marquee Sports Network - VEND-1165** | | | | | | | | | |
| 9/30/2022 | 0822 Expanded Basic | Net 30 | 2,821.22 | 0.00 | 15.00 | 2,821.22 | 2,821.22 | 0822 Expanded Basic | BL-9136 |
| | | | | | | **2,821.22** | **2,821.22** | | |
| **MCMASTER-CARR SUPPLY CO - VEND-34108** | | | | | | | | | |
| 8/6/2022 | Substation signage | Open Terms | 112.38 | 0.00 | 0.00 | 112.38 | 112.38 | 82623243 | BL-9076 |
| 8/24/2022 | Printer tape | Open Terms | 108.42 | 0.00 | 0.00 | 108.42 | 108.42 | 83549847 | BL-9131 |
| 8/24/2022 | Printer tape | Open Terms | 66.92 | 0.00 | 0.00 | 66.92 | 66.92 | 83560655 | BL-9132 |
| | | | | | | **287.72** | **287.72** | | |
| **METCALF, MIKE - VEND-34230** | | | | | | | | | |
| 9/2/2022 | 0922 Cel Phone | Open Terms | 75.00 | 0.00 | 0.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9047 |
| | | | | | | **75.00** | **75.00** | | |
| **Michael Fulkerson - VEND-1141 - BL-9083** | | | | | | | | | |
| 9/2/2022 | Credit Refund | Net 30 | 59.91 | 0.00 | 0.00 | 59.91 | 59.91 | 00044136-5 | BL-9083 |
| | | | | | | **59.91** | **59.91** | | |
| **Mid American Energy Co - VEND-1018** | | | | | | | | | |
| 9/14/2022 | Electric - Muni Plt Substation | Net 30 | 10.00 | 0.00 | 15.00 | 10.00 | 10.00 | 529309338 | BL-9089 |
| 9/17/2022 | Gas - 111 S Buxton, Muni plant | Net 30 | 57.46 | 0.00 | 15.00 | 57.46 | 57.46 | 529501029 | BL-9088 |
| 9/18/2022 | Gas - 909 E Hillcrest | Net 30 | 14.04 | 0.00 | 15.00 | 14.04 | 14.04 | 529555548 | BL-9100 |
| 9/18/2022 | Gas - 110 S B | Net 30 | 14.04 | 0.00 | 15.00 | 14.04 | 14.04 | 529559923 | BL-9101 |
| 9/18/2022 | Gas - 1300 E Iowa Bldg A | Net 30 | 12.46 | 0.00 | 15.00 | 12.46 | 12.46 | 529542524 | BL-9080 |
| 9/18/2022 | Gas - 1300 E Iowa Bldg B | Net 30 | 12.46 | 0.00 | 15.00 | 12.46 | 12.46 | 529532290 | BL-9081 |
| 9/18/2022 | Gas - 210 W 2nd | Net 30 | 12.46 | 0.00 | 15.00 | 12.46 | 12.46 | 529580393 | BL-9039 |
| | | | | | | **132.92** | **132.92** | | |
| **Mission Square - VEND-1303** | | | | | | | | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| 10/2/2022 | 090222 Payroll | Net 30 | 5,556.61 | 0.00 | 15.00 | 5,556.61 | 5,556.61 | 090222 Payroll | BL-9162 |
| | | | | | | **5,556.61** | **5,556.61** | | |
| **National Cable Television Cooperative, Inc. - VEND-1095** | | | | | | | | | |
| 9/29/2022 | 0822 Cable | Net 30 | 51,200.69 | 0.00 | 15.00 | 51,200.69 | 51,200.69 | 22080680 | BL-9142 |
| | | | | | | **51,200.69** | **51,200.69** | | |
| **Nexstar Broadcasting, Inc - VEND-1092** | | | | | | | | | |
| 9/30/2022 | Newsnation | Net 30 | 328.44 | 0.00 | 15.00 | 328.44 | 328.44 | 457134 | BL-9134 |
| 9/30/2022 | WHO | Net 30 | 6,413.46 | 0.00 | 15.00 | 6,413.46 | 6,413.46 | 457133 | BL-9141 |
| | | | | | | **6,741.90** | **6,741.90** | | |
| **Norwalk Ready Mix Concrete, Inc. - VEND-1119** | | | | | | | | | |
| 9/30/2022 | Line shop concrete | Net 30 | 1,047.60 | 0.00 | 15.00 | 1,047.60 | 1,047.60 | 312888 | BL-9125 |
| | | | | | | **1,047.60** | **1,047.60** | | |
| **Phipps Properties (Ryan Phipps) - VEND-1141 - BL-9082** | | | | | | | | | |
| 9/2/2022 | Credit Refund | Net 30 | 67.77 | 0.00 | 0.00 | 67.77 | 67.77 | 00056921-1 | BL-9082 |
| | | | | | | **67.77** | **67.77** | | |
| **Power & Tel - VEND-1037** | | | | | | | | | |
| 8/28/2022 | CLOSURE DROP TERMINAL KIT | Net 30 | 554.71 | 0.00 | 15.00 | 554.71 | 554.71 | 7499326-00 | BL-9056 |
| 9/29/2022 | FIBER DROP - 750' | Net 30 | 2,148.40 | 0.00 | 15.00 | 2,148.40 | 2,148.40 | 7346178-01 | BL-9122 |
| 9/30/2022 | FIBER - 12 CT FLT TONE DROP | Net 30 | 2,864.77 | 0.00 | 15.00 | 2,864.77 | 2,864.77 | 7560226-00 | BL-9121 |
| | | | | | | **5,567.88** | **5,567.88** | | |
| **RESCO - VEND-47234** | | | | | | | | | |
| 8/13/2022 | Transformers | Open Terms | 6,485.02 | 0.00 | 0.00 | 6,485.02 | 6,485.02 | 82864-01 | BL-9085 |
| | | | | | | **6,485.02** | **6,485.02** | | |
| **Secure Shred - VEND-1063** | | | | | | | | | |
| 8/31/2022 | Shred service | Net 30 | 52.00 | 0.00 | 15.00 | 52.00 | 52.00 | 69756 | BL-9062 |
| | | | | | | **52.00** | **52.00** | | |
| **Skye McBroom - VEND-1026** | | | | | | | | | |
| 10/1/2022 | 0922 Cel Phone | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 0922 Cel Phone | BL-9044 |
| | | | | | | **75.00** | **75.00** | | |
| **SPECTRUM ADVANTAGE LLC - VEND-101068** | | | | | | | | | |
| 9/2/2022 | Closure set-up, fusion splicing and mobilizatior | Open Terms | 8,420.00 | 0.00 | 0.00 | 8,420.00 | 8,420.00 | 22-28-1019 | BL-9108 |

| Vendor Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | **8,420.00** | **8,420.00** | | |
| **STERNQUIST CONST. INC. - VEND-50360** | | | | | | | | | |
| 8/24/2022 | Crushed concrete | Open Terms | 661.30 | 0.00 | 0.00 | 661.30 | 661.30 | 1770 | BL-9021 |
| | | | | | | **661.30** | **661.30** | | |
| **T.R.M. DISPOSAL LLC - VEND-101016** | | | | | | | | | |
| 8/25/2022 | 0922 Trash | Open Terms | 42.00 | 0.00 | 0.00 | 42.00 | 42.00 | 24535 | BL-9090 |
| | | | | | | **42.00** | **42.00** | | |
| **Teklink - VEND-1262** | | | | | | | | | |
| 9/20/2022 | Conduit bury and bore | Net 30 | 2,775.00 | 0.00 | 15.00 | 2,775.00 | 2,775.00 | WE 8/20/22 | BL-9097 |
| 9/27/2022 | Conduit bury and bore | Net 30 | 1,742.00 | 0.00 | 15.00 | 1,742.00 | 1,742.00 | WE 8/27/22 | BL-9102 |
| 10/5/2022 | Conduit bury and bore | Net 30 | 3,578.00 | 0.00 | 15.00 | 3,578.00 | 3,578.00 | WE 9/03/22 | BL-9109 |
| | | | | | | **8,095.00** | **8,095.00** | | |
| **Terry-Durin Co - VEND-1038** | | | | | | | | | |
| 9/17/2022 | COUPLERS - 3/4" E-LOC | Net 30 | 34.41 | 0.00 | 15.00 | 34.41 | 34.41 | 112500-02 | BL-9054 |
| | | | | | | **34.41** | **34.41** | | |
| **TrueNorth Companies LC - VEND-1100** | | | | | | | | | |
| 9/22/2022 | August safety meeting | Net 30 | 75.00 | 0.00 | 15.00 | 75.00 | 75.00 | 134639 | BL-9038 |
| | | | | | | **75.00** | **75.00** | | |
| **U.S. Cellular - VEND-1104** | | | | | | | | | |
| 9/11/2022 | 0822 Cel Phone | Net 30 | 1,235.11 | 0.00 | 15.00 | 1,235.11 | 1,235.11 | 526252200 | BL-9036 |
| | | | | | | **1,235.11** | **1,235.11** | | |
| **UMB BANK N.A. - VEND-103242** | | | | | | | | | |
| 9/3/2022 | Series 2017C Interest | Open Terms | 135,275.00 | 0.00 | 0.00 | 135,275.00 | 135,275.00 | | BL-9139 |
| | | | | | | **135,275.00** | **135,275.00** | | |
| **Unite Private Networks - VEND-1054** | | | | | | | | | |
| 10/1/2022 | Dark fiber | Net 30 | 3,368.60 | 0.00 | 15.00 | 3,368.60 | 3,368.60 | SI-22-026249 | BL-9113 |
| | | | | | | **3,368.60** | **3,368.60** | | |
| **VISION METERING LLC - VEND-103244** | | | | | | | | | |
| 8/11/2022 | 2S Solar Meters | Open Terms | 1,234.60 | 0.00 | 0.00 | 1,234.60 | 1,234.60 | 209860 | BL-9087 |
| 8/17/2022 | Meter test probe | Open Terms | 240.00 | 0.00 | 0.00 | 240.00 | 240.00 | 210130 | BL-9130 |
| | | | | | | **1,474.60** | **1,474.60** | | |

| Vendor<br>Due Date | Notes | Terms | Bill Total | Discount | Interest | Amount Due | Payment | Invoice Number | Bill Number |
|---|---|---|---|---|---|---|---|---|---|
| **WARREN COUNTY TREASURER - VEND-59867** | | | | | | | | | |
| 9/2/2022 | Parcel #3271 for 2022-23 | Open Terms | 897.00 | 0.00 | 0.00 | 897.00 | 897.00 | 246336 | BL-9103 |
| 9/2/2022 | Parcel #1278 for 2022-23 | Open Terms | 2,054.00 | 0.00 | 0.00 | 2,054.00 | 2,054.00 | 243244 | BL-9104 |
| | | | | | | **2,951.00** | **2,951.00** | | |
| **WESCO - VEND-60220** | | | | | | | | | |
| 8/20/2022 | Padmount fuse | Open Terms | 182.76 | 0.00 | 0.00 | 182.76 | 182.76 | 297179 | BL-9092 |
| 8/31/2022 | 350 MCM URD Triplex | Open Terms | 14,762.31 | 0.00 | 0.00 | 14,762.31 | 14,762.31 | 308998 | BL-9123 |
| | | | | | | **14,945.07** | **14,945.07** | | |
| **WESTRUM LEAK DETECTION - VEND-60304** | | | | | | | | | |
| 8/13/2022 | 2022 Leak detection survey | Open Terms | 3,250.00 | 0.00 | 0.00 | 3,250.00 | 3,250.00 | 3907 | BL-9029 |
| | | | | | | **3,250.00** | **3,250.00** | | |
| **Wiegert Disposal Inc - VEND-1081** | | | | | | | | | |
| 10/1/2022 | 0822 Dumpster Service | Net 30 | 110.00 | 0.00 | 15.00 | 110.00 | 110.00 | 0822 Dumpster Service | BL-9112 |
| | | | | | | **110.00** | **110.00** | | |
| **Wisconsin Independent Network, LLC - VEND-1067** | | | | | | | | | |
| 10/1/2022 | Ethernet | Net 30 | 7,383.00 | 0.00 | 15.00 | 7,383.00 | 7,383.00 | WIN017157 | BL-9115 |
| | | | | | | **7,383.00** | **7,383.00** | | |
| **YMCA Of Greater Des Moines - VEND-1169** | | | | | | | | | |
| 10/1/2022 | 0922 Employee Wellness | Net 30 | 416.40 | 0.00 | 15.00 | 416.40 | 416.40 | 0922 Employee Wellness | BL-9155 |
| | | | | | | **416.40** | **416.40** | | |
| | | Check Count: **85** | | Totals: | | **$572,665.97** | **$572,665.97** | | |

INDIANOLA MUNICIPAL UTILITIES

Electric • Communications • Water

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Approval of the July 2022 Financial Reports

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**Recommendation:** Simple motion is in order.

**Attachments:** 1. 0722 Financials Summary

# Income Statement
# By Account Group
*July 2022*

| | | FY23 | | |
|---|---|---|---|---|
| | **Current Budget** | **Current Period** | **YTD Actual** | **% of Budget** |
| **600 WATER OPERATING FUND** | | | | |
| Water Service Sales | 2,941,250.00 | 222,506.13 | 222,506.13 | 7.57% |
| Other Water Revenue | 310,700.00 | 23,181.96 | 23,181.96 | 7.46% |
| **Total Revenue:** | **3,251,950.00** | **245,688.09** | **245,688.09** | |
| Water O&M Expense | 3,292,412.00 | 300,291.72 | 300,291.72 | 9.12% |
| **Total Expense:** | **3,292,412.00** | **300,291.72** | **300,291.72** | |
| **Beginning Fund Balance** | | 14,257,601.36 | 14,257,601.36 | |
| **Net Surplus (Deficit)** | (40,462.00) | (54,603.63) | (54,603.63) | |
| **Ending Fund Balance** | | 14,202,997.73 | 14,202,997.73 | |

**WATER CASH ON HAND**

| | | |
|---|---|---|
| O&M | $ | 302,419 |
| Capital | $ | 2,437,929 |
| Reserves | $ | 75,000 |
| | $ | 2,815,348 |
| Cash on Hand | 274 Days | |

| | **Gallons Billed** | | | **Inventory on Hand** | |
|---|---|---|---|---|---|
| | **FY22-23** | **FY21-22** | **YOY Increase %** | **FY22-23** | **FY21-22** |
| July | 31,583,030 | 35,679,910 | -11% | $ 112,249 | $ 70,025 |
| August | 37,092,320 | 33,673,809 | 10% | $ 110,331 | $ 86,918 |
| September | | | | | |
| October | | | | | |
| November | | | | | |
| December | | | | | |
| January | | | | | |
| February | | | | | |
| March | | | | | |
| April | | | | | |
| May | | | | | |
| June | | | | | |
| YTD TOTAL | 68,675,350 | 69,353,719 | | $ 111,290 | $ 78,471 |
| | -1.0% | | | 41.8% | |

## Income Statement
## By Account Group
*July 2022*

| | | FY23 | | |
|---|---|---|---|---|
| | Current Budget | Current Period | YTD Actual | % of Budget |
| **700 WATER CAPITAL PROJECTS FUND** | | | | |
| From Water Operations | 1,174,000.00 | 97,833.33 | 97,833.33 | 8.33% |
| **Total Transfers In:** | **1,174,000.00** | **97,833.33** | **97,833.33** | |
| Water Capital Expense | 1,174,000.00 | 17,996.75 | 17,996.75 | 1.53% |
| **Total Expense:** | **1,174,000.00** | **17,996.75** | **17,996.75** | |
| **Beginning Balance** | | 2,470,341.61 | 2,470,341.61 | |
| **Net Surplus (Deficit)** | - | 79,836.58 | 79,836.58 | |
| **Ending Balance** | | 2,550,178.19 | 2,550,178.19 | |

## Income Statement
## By Account Group
*July 2022*

| | | FY23 | | | |
|---|---|---|---|---|---|
| | | Current Budget | Current Period | YTD Actual | % of Budget |
| **620** | **IMU ADMINISTRATION FUND** | | | | |
| | US/Admin Revenue | 1,342,700.00 | 119,341.84 | 119,341.84 | 8.89% |
| | **Total Revenue:** | **1,342,700.00** | **119,341.84** | **119,341.84** | |
| | US/Admin O&M Expens | 1,342,700.00 | 112,056.07 | 112,056.07 | 8.35% |
| | **Total Expense:** | **1,342,700.00** | **112,056.07** | **112,056.07** | |
| | **Beginning Fund Balance** | | 96.55 | 96.55 | |
| | **Net Surplus (Deficit)** | - | 7,285.77 | 7,285.77 | |
| | **Ending Fund Balance** | | 7,382.32 | 7,382.32 | |

**US/ADMIN CASH ON HAND**

| | | |
|---|---|---|
| O&M | $ | 353,930 |
| Cash on Hand | 98 Days | |

# Income Statement
# By Account Group
*July 2022*

| | | FY23 | | | |
|---|---|---|---|---|---|
| | | Current Budget | Current Period | YTD Actual | % of Budget |
| **630** | **ELECTRIC OPERATING FUND** | | | | |
| | Electric Service Sales | 16,520,384.00 | 1,354,066.64 | 1,354,066.64 | 8.20% |
| | Other Electric Revenue | 1,133,472.00 | 120,408.62 | 120,408.62 | 10.62% |
| | **Total Revenue:** | **17,653,856.00** | **1,474,475.26** | **1,474,475.26** | |
| | Electric O&M Expense | 16,204,529.00 | 1,451,306.84 | 1,451,306.84 | 8.96% |
| | **Total Expense:** | **16,204,529.00** | **1,451,306.84** | **1,451,306.84** | |
| | **Beginning Fund Balance** | | 35,232,749.84 | 35,232,749.84 | |
| | **Net Surplus (Deficit)** | 1,449,327.00 | 23,168.42 | 23,168.42 | |
| | **Ending Fund Balance** | | 35,255,918.26 | 35,255,918.26 | |

**ELECTRIC CASH ON HAND**

| | | |
|---|---|---|
| O&M | $ | 8,127,452 |
| Capital | $ | 5,262,226 |
| EL Revenue Bonds | $ | 1,463,229 |
| | $ | 14,852,907 |
| Cash on Hand | 308 Days | |

**Kwh's Billed**

| | FY22-23 | FY21-22 | YOY Increase % |
|---|---|---|---|
| July | 10,121,595 | 11,445,992 | -12% |
| August | 12,793,186 | 12,112,667 | 6% |
| September | | | |
| October | | | |
| November | | | |
| December | | | |
| January | | | |
| February | | | |
| March | | | |
| April | | | |
| May | | | |
| June | | | |
| YTD TOTAL | 22,914,781 | 23,558,659 | |
| | -2.7% | | |

**Inventory on Hand**

| | FY22-23 | FY21-22 |
|---|---|---|
| July | $ 1,165,007 | $ 989,343 |
| August | $ 1,198,416 | $ 992,348 |
| YTD TOTAL | $ 1,181,712 | $ 990,846 |
| | 19.3% | |

## Income Statement
## By Account Group
*July 2022*

| | Current Budget | FY23 Current Period | YTD Actual | % of Budget |
|---|---|---|---|---|
| **730 ELECTRIC CAPITAL PROJECTS FUND** | | | | |
| Electric Capital Revenu | 1,021,600.00 | 108,027.98 | 108,027.98 | 10.57% |
| **Total Revenue:** | **1,021,600.00** | **108,027.98** | **108,027.98** | |
| Electric Capital Expens | 2,477,500.00 | 45,123.05 | 45,123.05 | 1.82% |
| **Total Expense:** | **2,477,500.00** | **45,123.05** | **45,123.05** | |
| **Beginning Fund Balance** | | 6,639,488.98 | 6,639,488.98 | |
| **Net Surplus (Deficit)** | (1,455,900.00) | 62,904.93 | 62,904.93 | |
| **Ending Fund Balance** | | 6,702,393.91 | 6,702,393.91 | |

# Income Statement
# By Account Group
*July 2022*

| | | FY23 | | | |
|---|---|---|---|---|---|
| | | **Current Budget** | **Current Period** | **YTD Actual** | **% of Budget** |
| **793** | **ELECTRIC REVENUE BONDS FUND** | | | | |
| | From Electric Operatior | 1,133,750.00 | 94,479.17 | 94,479.17 | 8.33% |
| | **Total Transfers In:** | **1,133,750.00** | **94,479.17** | **94,479.17** | |
| | Electric Debt Service | 1,133,750.00 | 0.00 | 0.00 | 0.00% |
| | **Total Expense:** | **1,133,750.00** | **0.00** | **0.00** | |
| | **Beginning Fund Balance** | | 1,368,749.95 | 1,368,749.95 | |
| | **Net Surplus (Deficit)** | - | 94,479.17 | 94,479.17 | |
| | **Ending Fund Balance** | | 1,463,229.12 | 1,463,229.12 | |

# Income Statement
# By Account Group
*July 2022*

| | | FY23 Current Budget | FY23 Current Period | FY23 YTD Actual | FY23 % of Budget |
|---|---|---|---|---|---|
| **640** | **FIBER OPERATING FUND** | | | | |
| | Fiber Service Sales | 4,133,970.00 | 357,875.03 | 357,875.03 | 8.66% |
| | Other Fiber Revenue | 773,350.00 | 30,037.69 | 30,037.69 | 3.88% |
| | **Total Revenue:** | **4,907,320.00** | **387,912.72** | **387,912.72** | |
| | Fiber O&M Expense | 4,900,617.00 | 332,322.63 | 332,322.63 | 6.78% |
| | **Total Expense:** | **4,900,617.00** | **332,322.63** | **332,322.63** | |
| | **Beginning Fund Balance** | | (4,356,866.49) | (4,356,866.49) | |
| | **Net Surplus (Deficit)** | 6,703.00 | 55,590.09 | 55,590.09 | |
| | **Ending Fund Balance** | | (4,301,276.40) | (4,301,276.40) | |

**FIBER CASH ON HAND**

| | | |
|---|---|---|
| O&M | $ | 34,657 |
| Capital | $ | (48,368) |
| | $ | (13,712) |
| Cash on Hand | 0 days | |

**Subscriptions** / **Inventory on Hand**

| | FY22-23 | FY21-22 | YOY Increase % | Inventory FY22-23 | Inventory FY21-22 |
|---|---|---|---|---|---|
| July | 3,513 | 2,995 | 17% | $ 1,523,440 | $ 1,379,250 |
| August | 3,560 | 3,039 | 17% | $ 1,596,300 | $ 1,381,182 |
| September | | | | | |
| October | | | | | |
| November | | | | | |
| December | | | | | |
| January | | | | | |
| February | | | | | |
| March | | | | | |
| April | | | | | |
| May | | | | | |
| June | | | | | |
| YTD TOTAL | 7,073 | 6,034 | | $ 1,559,870 | $ 1,380,216 |
| | 17.2% | | | 13.0% | |

## Income Statement
## By Account Group
*July 2022*

| | Current Budget (FY23) | Current Period (FY23) | YTD Actual (FY23) | % of Budget (FY23) |
|---|---|---|---|---|
| **740 Fiber/Communications Capital** | | | | |
| From Fiber Operations | 2,178,400.00 | 48,200.00 | 48,200.00 | 2.21% |
| **Total Revenue:** | **2,178,400.00** | **48,200.00** | **48,200.00** | |
| Fiber Capital Expenses | 2,178,000.00 | 111,484.59 | 111,484.59 | 5.12% |
| **Total Expense:** | **2,178,000.00** | **111,484.59** | **111,484.59** | |
| **Beginning Fund Balance** | | 1,566,044.01 | 1,566,044.01 | |
| **Net Surplus (Deficit)** | 400.00 | (63,284.59) | (63,284.59) | |
| **Ending Fund Balance** | | 1,502,759.42 | 1,502,759.42 | |

| | |
|---|---|
| ***Fund 640 Beginning Fund Balance** | (4,356,866.49) |
| ***Fund 740 Beginning Fund Balance** | 1,566,044.01 |
| | (2,790,822.48) * |

* The Fiber Utility fund has a deficit fund balance of $2,790,822.48. The deficit is the result of start-up costs incurred to initiate the utility service. The deficit will be eliminated in future periods through net customer charges.

INDIANOLA MUNICIPAL UTILITIES
IMU
Electric • Communications • Water

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Approval of Minutes of the prior board meetings

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**Recommendation:** Simple motion is in order.

**Attachments:**
1. 08222022 BOT CC Joint Meeting Minutes
2. 08222022 BOT Minutes

# CITY OF INDIANOLA COUNCIL AND BOARD OF TRUSTEES JOINT MEETING

August 22, 2022
5:30 PM
City Council Chambers
110 N 1st Street
Minutes

**Call to Order**
The Indianola City Council and IMU Board of Trustees met in special joint session at 5:30 PM on August 22, 2022 in the City Hall Council Chambers. Mayor Stephanie Erickson called the meeting to order and on roll call the following Council Members were present: Heather Hulen, Ron Dalby, Gwen Schroder, Christina Beach, Steve Richardson, Mayor Erickson and the following Trustees were present: Deb White, Lori Smith, Dom Selgrade, and Adam Voigts. ABSENT: Council Member John Parker and Trustee Mike Rozga.

**Capital Improvement Plans**
Department heads from the City and IMU provided information on their capital improvement plans for the next two – five years.

**Adjourn**
Board Member Smith adjourned the meeting at 6:32 p.m.

________________________
Lori Smith, Chairperson

ATTEST:

________________________
Jackie Raffety, City Clerk

**IMU BOARD OF TRUSTEES OF THE ELECTRIC, WATER AND COMMUNICATIONS UTILITIES**

August 22, 2022
6:30 PM
Or immediately following the joint City Council - IMU Board Meeting
City Hall Council Chambers
110 N 1st Street
Minutes

**Call to Order**
The Indianola Municipal Utilities Board of Trustees met in regular session at 6:38 PM on August 22, 2022, in the City Hall Council Chambers. Chairperson Lori Smith called the meeting to order and on roll call the following members were present: Dom Selgrade, Deb White, Lori Smith, Adam Voigts. Absent: Mike Rozga.

**Public Comment**
There were no public comments offered.

**Consent Agenda:**
White moved to approve the consent agenda and Voigts seconded it. Question was called for and on voice vote the Chairperson declared the motion approved unanimously. The consent agenda was as follows:

- Approval of Claims
- Approval of Minutes of the prior board meeting

**Electric Utility Informational Items**
Electric Department Superintendent Mike Metcalf reported diesel fuel was purchased as discussed in the prior meeting. He will share a report from the IUB with the Board.

**Water Utility Informational Items**
Lou Elbert, Water Department Superintendent, provided an update on water main projects.

**Solar Update**
Raki Giannakouros, Sand Hills Energy, offered an update to the Solar Project, noting that the contract will be ready to sign in September and work will begin in early summer 2023.

**Communications Utility Action Items**
Mike Maloney, D.A. Davidson, led a discussion on the issuance of debt. It was noted that local banks will issue a portion of the loan. He recommended approval of the proposed resolution on the agenda in order to authorize the redemption of outstanding debt.

Voigts moved to approve Resolution 2022-039 authorizing the use of an official statement in connection with the sale of bonds thereunder and authorizing the redemption of outstanding notes. White seconded it. On roll call, the vote was AYES: Selgrade, White, Smith, Voigts. NAYS: None. ABSENT: Rozga. Whereas the Chairperson declared the motion carried unanimously.

White moved to approve a three-year contract with Calix for Support Cloud Licensing. Selgrade seconded it. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

Selgrade moved to approve the purchase of an 8VSB Clear QAM Receiver and Dual Processor, licensing and maintenance in the amount of $16,051.10. White seconded it. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

**Communications Utility Informational Items**
Kurt Ripperger, Telecommunications Director, reported that damage to equipment by a contractor will require overnight repairs that will affect customers on the northwest side of town.

**Combined Electric, Water and Communications Action Items**
Voigts moved to approve an agreement with IMPACT to administer the Iowa Low-Income Home Energy Assistance Program (LIHEAP). Selgrade seconded it. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

**Combined Electric, Water and Communications Informational Items**
General Manager Chris Des Planques summarized the recent MEAN meeting discussions. He also noted that the Strategic Plan Presentation and closed session regarding telecommunications would be postponed to the next IMU Board meeting on September 12, 2022.

**Other Business**
White moved to enter into closed session at 7:51 PM in accordance with Iowa Code Section 21.5 (1)(j) to discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. Selgrade seconded it. On roll call, the vote was AYES: Selgrade, White, Smith, Voigts. NAYS: None. ABSENT: Rozga. Whereas the Chairperson declared the motion carried unanimously.

Voigts moved to exit the closed session at 8:18 PM and Smith seconded it. On roll call, the vote was AYES: Selgrade, White, Smith, Voigts. NAYS: None. ABSENT: Rozga. Whereas the Chairperson declared the motion carried unanimously.

**Adjourn**
The meeting was adjourned at 8:18 p.m. on a motion by Voigts and seconded by White. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

____________________________
Lori Smith, Chairperson

ATTEST:

______________________
Jackie Raffety, City Clerk

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Fiber Financing Results Presentation (Series 2022A/B)

**Recommendation:** Michael Maloney, D.A. Davidson, will present.

**Attachments:** 1. Davidson Slides for IMU 09-12-22 Board Meeting

# Indianola Municipal Utilities

*September 12, 2022*

## Fiber Financing Results (Series 2022A/B)

**Michael Maloney, Managing Director**
**(515) 471-2723**
**mmaloney@dadco.com**

# Financing Plan Overview

- Board is pending bids for the shared transmission assets with the City of Pella's Municipal Telecommunications Utility.

- Approximately $3.2 million project cost to the split evenly between the two parties.

- Fall 2022 will be five years since securing financing for the fiber-to-the-premise City-wide build-out.

- Goal to finance IMU portion of the transmission project and potentially refinance the original 2017 'start-up' debt.
  - ✓ 2017A – would currently reset at 5.61% (as of August 25th).
  - ✓ 2017B – would currently reset at 6.61% (as of August 25th).

# Final Sources & Uses

| | Tax-exempt | Taxable |
|---|---|---|
| | **IMU New $ & Refunding 2022A** | **IMU Refunding 2022B** |
| ***SOURCES:*** | | |
| Par Amount | $7,976,000 | $2,805,000 |
| **TOTAL SOURCES** | **$7,976,000** | **$2,805,000** |
| ***USES:*** | | |
| Project Funds | $1,774,000 | - |
| Redemption of Series 2017A | 5,953,401 | - |
| Redemption of Series 2017B | - | 2,740,826 |
| **Subtotal - Project Costs/Proceeds:** | $7,727,401 | $2,740,826 |
| Reserve Fund | - | - |
| Capitalized Interest Fund | 75,655 | - |
| Issuance Costs/Contingency | 172,944 | 64,174 |
| **Subtotal - Non-project costs:** | $248,599 | $64,174 |
| **TOTAL USES** | **$7,976,000** | **$2,805,000** |

# Series 2022A – Tax-exempt Note

- Financed by TruBank (lead) with participation from Peoples Bank.
  - ✓ 50%/50% split for financing.
  - ✓ **Local lenders stepped up to match best national terms.**
- Will finance new project costs (Pella 28E) and refinance 2017A Notes.
- 3.35% interest rate fixed for entire 12-year term.
  - ✓ Refinancing of 2017A is same repayment (10 years).
- Loan will be callable at IMU option without penalty after June 1, 2028.
  - ✓ 6-year par call.
- Capitalized interest through 12/1/23 for new project portion.
- First interest and principal paid 6/1/23.

# Series 2022B – TAXABLE Note

- Financed by Truist Bank.
- Will refinance 2017B Notes.
- 4.20% interest rate fixed for entire 10-year term.
  - ✓ Refinancing of 2017B is same repayment.
- Loan will be callable at IMU option without penalty after June 1, 2028.
  - ✓ 6-year par call.
- First interest and principal paid 6/1/23.

# Final Debt Service Structure – 2022A + 2022B

INDIANOLA MUNICIPAL UTILITIES
IMU
Electric • Network Services • Water

**Debt Service Cash Flow Analysis**

| | Fiscal Year | Series 2022A Debt Service | Series 2022B Debt Service | TOTAL Debt Service |
|---|---|---|---|---|
| 1 | 6/30/2023 | $718,620 | $344,522 | $1,063,141 |
| 2 | 6/30/2024 | 750,075 | 344,680 | 1,094,755 |
| 3 | 6/30/2025 | 781,844 | 344,684 | 1,126,528 |
| 4 | 6/30/2026 | 782,352 | 344,268 | 1,126,620 |
| 5 | 6/30/2027 | 782,223 | 344,432 | 1,126,655 |
| 6 | 6/30/2028 | 781,458 | 345,134 | 1,126,592 |
| 7 | 6/30/2029 | 782,057 | 344,332 | 1,126,389 |
| 8 | 6/30/2030 | 781,952 | 345,068 | 1,127,020 |
| 9 | 6/30/2031 | 782,143 | 345,258 | 1,127,401 |
| 10 | 6/30/2032 | 781,598 | 344,902 | 1,126,500 |
| 11 | 6/30/2033 | 992,315 | 0 | 992,315 |
| 12 | 6/30/2034 | 993,194 | 0 | 993,194 |
| 13 | 6/30/2035 | 0 | 0 | 0 |
| | **TOTAL** | $9,709,828 | $3,447,280 | $13,157,107 |

| | |
|---|---|
| **Rating:** | Non-Rated |
| **User Rate Test:** | 1.10 X |
| **Add. Bonds Test:** | 1.10 X |
| **Reserve Required:** | No |

# Other Considerations

- Taxable interest rates have increased due to inflationary pressures and related Fed (FOMC) Action.
  - ✓ The Series 2017A/B Notes are due to reset May 1, 2024 based on the 7-year Treasury index.
- Final numbers provide sufficient refinancing savings to merit proceeding (target of >3% of present value savings):
  - ✓ **$551,331 of present value savings (6.43% of refunded par amount).**
- Current annual payments are $1,075,000 (2017A + 2017B).
  - ✓ Does not include the Pella transmission line.
  - ✓ Reset would be approaching $1,200,000 for FY 25.
- 2022A + 2022B max payments (including Pella transmission line):
  - ✓ Increase $50,000 vs. 'best-case' rate reset.
  - ✓ Decrease $75,000 vs. 'current projected' rate reset.

# Remaining Financing Steps

## Tonight's Action

- September 12th Board meeting – authorize loan documents.
  - ✓ Locks-in rates and terms (final Board action).

## Remaining Step

- September 28th (no meeting necessary) – closing/delivery of funds to IMU.
  - ✓ Redemption of 2017A/B Notes.
  - ✓ Deposit to IMU account for project funds.

INDIANOLA MUNICIPAL UTILITIES
IMU
Electric • Communications • Water



# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Resolution providing for the issuance and securing the payment of future Obligations for the purposes of borrowing money for Indianola Municipal Utilities.

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**Recommendation:** Roll call is in order.

**Attachments:**
1. Index Series 2022B (IMU #2)-v3
2. Master Iss Resolution (Indianola MU #2 2022)-v5

INDEX OF CLOSING DOCUMENTS
INDIANOLA MUNICIPAL UTILITIES

$2,805,000 TAXABLE COMMUNICATIONS REVENUE REFUNDING
NOTE, SERIES 2022B

Closing Date: September 28, 2022

| | |
|---|---|
| Issuer: | City of Indianola, Iowa, acting by and through the Board of Trustees of Indianola Municipal Utilities |
| Lender: | Truist Bank<br>Charlotte, North Carolina |
| Lender Counsel: | Brick Gentry, P.C.<br>West Des Moines, Iowa |
| Bond Counsel: | Dorsey & Whitney LLP<br>Des Moines, Iowa |
| Placement Agent: | D.A. Davidson & Co.<br>Des Moines, Iowa |
| Placement Agent Counsel: | Gilmore & Bell, P.C.<br>St. Louis, Missouri |

At the Closing, the following documents, certificates and opinions will be delivered:

1. Distribution List and Final Numbers.
2. Resolutions of the Board of Trustees:
   a. Resolution and Minutes to Set Public Hearing (July 25, 2022); Affidavit.
   b. Hearing Resolution and Minutes (August 8, 2022).
   c. Resolution to Approve Call Notice (August 22, 2022).
   d. Master Resolution (September 12, 2022).
   e. Series Resolution (September 12, 2022).
3. Specimen of Series 2022B Note (original delivered to the Lender).
4. Wire Transfer Agreement.
5. Loan Agreement.
6. Investor Letter.
7. Closing and Tax Certificate of the Issuer.
8. Bond Counsel Opinion.

Electronic transcripts shall to be delivered, post-closing, to:

| | |
|---|---|
| Issuer | Placement Agent |
| Bond Counsel | Placement Agent Counsel |
| Lender | |
| Lender Counsel | |

APPROVE MASTER RESOLUTION

517813

Indianola, Iowa

September 12, 2022

The Board of Trustees of the Indianola Municipal Utilities, Indianola, Iowa, met on September 12, 2022 at 5:30 o'clock p.m., at the Council Chambers, City Hall, Indianola, Iowa.

The meeting was called to order by the Chairperson, and the roll was called showing the following Board Members present and absent:

Present: ______________________________________________

Absent: ______________________________________________

* *Other Business* *

The Board took up and considered the matter of entering into a master resolution for the borrowing of money for the Board's Municipal Communications Utility System.

After due consideration and discussion, Board Member ________________________ introduced the following resolution and moved its adoption, seconded by Board Member _____________________. The Chairperson put the question upon the adoption of said resolution, and the roll being called, the following Board Members voted:

Ayes: ______________________________________________

Nays: ______________________________________________

Whereupon, the Chairperson declared the resolution duly adopted, as follows:

* *Other Business* *

On motion and vote the meeting adjourned.

RESOLUTION NO. ______

Resolution providing for the issuance and securing the payment of future Obligations for the purposes of borrowing money for the Indianola Municipal Utilities

WHEREAS, the City of Indianola (the "City"), in Warren County, State of Iowa, did heretofore establish the Indianola Municipal Utilities (the "Utility") in and for the City; and

WHEREAS, the management and control of the Utility are vested in the Board of Trustees (the "Board") of the Utility; and

WHEREAS, the City, acting by and through the Board, is authorized and empowered by Chapter 384 of the Code of Iowa (the "Act") to issue Obligations (as provided herein) for the Municipal Communications Utility System (the "System") of the Utility secured by the Net Revenues (as defined herein) of the System; and

WHEREAS, it is deemed necessary and advisable that the Board should adopt a master resolution, to provide for the establishment of funds and accounts and to the authorize the incurrence of Obligations in the future; and

WHEREAS, the following action is now considered to be in the best interests of the City;

NOW, THEREFORE, Be It Resolved by the Board of Trustees of the Indianola Municipal Utilities, as follows:

Section 1. Definitions. Terms used herein shall have the following meanings in this resolution unless the text expressly or by necessary implication requires otherwise:

"Authorized Representative" means, with respect to the System, the Chairperson, the Board Secretary or any other person or persons designated as an Authorized Representative of the System by resolution of the Board.

"Bond Counsel" means the firm of Dorsey & Whitney LLP, Des Moines, Iowa, or any other firm of nationally recognized bond counsel experienced in tax-exempt financing, selected by the Utility.

"Bond Resolution" or "Resolution" or "Master Resolution" shall mean this Master Resolution, as supplemented and amended from time to time.

"Capital Lease" has the meaning set forth in Section 10 hereof.

"Debt Service Coverage Ratio" means, for each Fiscal Year, the ratio determined by dividing (a) a numerator equal to the Net Income Available for Debt Service as an average of the prior three year period by (b) a denominator equal to the Debt Service Payments for that period.

"Debt Service Payments" means, for any period or payable at any time, the principal, and interest on any Parity Obligations for that period or payable at that time whether due at maturity or upon redemption or acceleration.

"Defeasance Obligations" mean any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

> (1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;
>
> (2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;
>
> (3) such cash and the principal of and interest on such United States Government Obligations serving as security for the obligations, plus any cash in the escrow fund, are sufficient to meet the liabilities of the obligations;
>
> (4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;
>
> (5) such cash and United States Government Obligations serving as security for the obligations, are not available to satisfy any other claims, including those against the trustee or escrow agent; and
>
> (6) the obligations are rated in the highest rating category by Moody's Investors Service, Inc. (presently "Aaa") or Standard & Poor's Ratings Services (presently "AAA").

"Fiscal Year" shall mean the twelve-month period beginning on July 1 of each year and ending on June 30 of the following year, or any other consecutive twelve-month period adopted by the Board or by law as the official accounting period of the System.

"GAAP" means generally accepted accounting principles as issued by the Governmental Accounting Standards Board (GASB) from time to time, consistently applied.

"Government Securities" shall mean direct obligations of, or obligations the payment of principal of and interest on which are fully and unconditionally guaranteed by, the United States of America.

"Gross Revenues" shall mean all income and receipts derived from the operation of the System.

"Indebtedness" shall mean all obligations payable out of Net Revenues, including Capital Leases and other obligations appearing on the balance sheet of the System as liabilities for the payment of money as determined in accordance with GAAP; provided that Indebtedness shall not include:

(a) any portion of any Indebtedness for which cash or escrow obligations are irrevocably on deposit in an escrow or trust account with a third party escrow agent, which cash and escrow obligations (including, where appropriate, the earnings or other increments to accrue thereon) are required to be used to pay the principal of or interest on such Indebtedness;

(b) liabilities incurred by the endorsement for collection or deposit of checks or drafts received in the ordinary course of business or overdrafts to banks to the extent there are immediately available funds sufficient to pay such overdrafts and such overdrafts are incurred and corrected in the ordinary course of business;

(c) accounts payable and similar liabilities (other than for the repayment of borrowed money) incurred in the ordinary course of business;

(d) liabilities payable out of current payments for the funding of employee pension plans, retiree benefits other than pensions, health plans and other benefit programs, contributions to self-insurance or pooled-risk insurance programs and estimated long-term self-insurance liability, and the funding of reserves for deferred taxes, deferred revenues, deferred compensation, and similar such liabilities;

(e) obligations under contracts for supplies, services or pensions allocated to the current Operating Expenses of the System of future years in which the supplies are to be furnished, the services rendered or the pensions paid;

(f) rentals payable under leases which are not capitalized under GAAP; or

(g) any other obligations that do not constitute indebtedness under GAAP.

"Independent Auditor" shall mean a firm of independent certified public accountants.

"Independent Consultant" shall mean a person or firm who is nationally recognized, not an employee or officer of the City or the Utility, qualified to pass upon questions relating to the financial affairs of organizations engaged in like operations to those of the System and having a favorable reputation for skill and experience in such financial affairs.

"Iowa Investment Statutes" means Iowa Code chapters 12B and 12C, as amended from time to time, governing allowable investments of the Utility held pursuant to a trust indenture or other issuance document.

"Irrevocable Deposits" means the irrevocable deposit in trust of cash in an amount, or Defeasance Obligations the principal of and interest on which will be an amount, sufficient to pay all or a portion of the Debt Service Payments on, as the same shall become due, any Indebtedness which would otherwise be considered outstanding.

"Long-Term Indebtedness" means (a) Indebtedness having an original stated maturity or term greater than one year, or (b) Indebtedness having an original stated maturity or term equal to or less than one year that is renewable or extendable at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

"Moody's" shall mean Moody's Investors Services, Inc.

"Net Income Available for Debt Service" means, for any period of calculation, with respect to the System, the Net Revenues; provided, that no determination thereof shall take into account:

(a) any gain or loss resulting from either the early extinguishment or refinancing of Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business;

(b) gifts, grants, bequests, donation or contributions, and income therefrom, to the extent permanently restricted by the donor in writing or by law to a particular purpose inconsistent with their use for the payment of Debt Service Payments or the payment of expenses;

(c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards;

(d) adjustments to the value of assets, deferred outflows of resources, liabilities or deferred inflows of resources resulting from changes in GAAP or liabilities resulting from changes in GAAP, or resulting from a provision for impairment of assets which does not result in the expenditure of cash;

(e) unrealized gains or losses that do not result in the receipt or expenditure of cash;

(f) any temporary or other than temporary impairment of investment securities; and

(g) nonrecurring items which do not involve the receipt, expenditure or transfer of assets; and

(h) any adjustment to pension or other postemployment benefits obligation expense related amounts which do not result in the expenditure of cash.

“Net Proceeds” means the net proceeds of any insurance proceeds, condemnation awards or sale proceeds relating to any damage, destruction, condemnation or sale under threat of condemnation of the System remaining after payment of all expenses incurred in the collection of those proceeds, including attorneys’ fees and any other expenses.

“Net Revenues” shall mean Gross Revenues of the System after deduction of Operating Expenses of the System.

“Obligation Issuance Documents” means collectively the Parity Obligation Issuance Documents and the Subordinated Obligation Issuance Documents.

“Obligations” means, collectively, Parity Obligations and Subordinated Obligations.

“Officer’s Certificate” or “Certificate of the Utility” shall mean a certificate signed by an Authorized Representative of the Utility.

“Operating Expenses of the System” shall mean and include salaries, wages, cost of maintenance and operation, materials, supplies, insurance and all other items normally included under recognized accounting practices, but does not include allowance for depreciation in the value of physical property, amortization, other non-cash expenses or interest expenses.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel selected by the Utility.

“Opinion of Counsel” means a written opinion of counsel selected by the Utility.

“Outstanding,” when used as of any particular time with reference to a Obligation, means all Obligations theretofore, or thereupon, being authenticated and delivered under this Resolution and any applicable Obligation Issuance Documents except (1) Obligations theretofore canceled or surrendered for cancellation, (2) Obligations with respect to which all liability shall have been discharged, and (3) Obligations for the transfer or exchange of or in lieu of or in substitution for which other Obligations shall have been authenticated and delivered pursuant to this Resolution and any applicable Obligation Issuance Documents.

“Parity Obligation Debt Service Reserve Fund” means any funds or accounts established pursuant to any Parity Obligation Issuance Document to serve as a debt service reserve fund for the payment of principal of and interest on the Parity Obligations issued pursuant thereto.

“Parity Obligation Holder” or “Holder” means any current holder of any Parity Obligation, except that if the Parity Obligation Issuance Documents identify a trustee or other fiduciary to act on behalf of the holders of Parity Obligations, such trustee or other fiduciary shall be considered to be the holder of such Parity Obligations so long as it is so acting.

“Parity Obligation Issuance Documents” means a Series Resolution, loan agreement, indenture or other document, as the case may be, authorizing and issuing a series of Parity Obligations.

"Parity Obligation Sinking Fund" means one or more sinking funds or similar accounts established to pay principal of and interest on any Parity Obligations established in the related Parity Obligation Issuance Documents.

"Parity Obligation Special Purpose Funds" means one or more funds or accounts established in the related Parity Obligation Issuance Documents for special purposes (such as a repair and replacement fund, improvement fund or other special purpose fund related).

"Parity Obligations" means any Indebtedness payable from Net Revenues and secured by a first lien on such Net Revenues, whether in the form of bonds, notes, loan agreements, leases, guaranties or other obligations.

"Person" or "person" means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"Qualified Investments" shall mean investments in any of the following, so long as such investment complies with the Iowa Investment Statutes: (i) Government Securities, (ii) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States of America, pursuant to authority granted by the Congress of the United States of America, (iii) interest-bearing deposit accounts (which may be represented by certificates of deposit, time deposit open account agreements or other deposit instruments) in national or state banks or savings and loan associations which deposit accounts, to the extent not fully insured by the Federal Deposit Insurance Corporation or secured pursuant to Chapter 12C of the Code of Iowa, shall be in national or state banks whose debt obligations are rated "Aa" or better by Moody's or "AA" or better by S&P, (iv) bankers acceptances drawn on and accepted by national or state banks rated "Aa" or better by Moody's or "AA" or better by S&P, (v) notes or commercial paper rated in the highest short-term rating category by Moody's or S&P, (vi) shares of investment companies or cash equivalent investments which are authorized to invest only in assets or securities described in (i), (iv), or (v) above, (vii) repurchase agreements with financial institutions fully secured by Government Securities, provided that such Government Securities shall be in the possession of the Utility or a third party (other than the other party to such repurchase agreement) acting solely as agent for the Utility, (viii) money market funds having a minimum asset value of $100,000,000, (ix) obligations issued by any state of the United States or any political subdivision thereof which are rated "Aa" or better by Moody's or "AA" or better by S&P at the time the obligations are acquired, and (x) investment agreements with financial institutions rated "Aa or better by Moody's or "AA" or better by S&P at the time the investment agreement is entered into. For the purpose of determining the amount in any fund, all Investment Securities credited to such fund shall be valued at fair market value.

"Revenue Fund" means the fund established in Section 5 hereof.

"Series Resolution" means any resolution adopted by the Board authorizing the issuance of a Series of Obligations with respect to the System.

“Short-Term Indebtedness” shall mean Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable at the option of the debtor for a term greater than one year beyond the date of original incurrence.

“Subordinated Obligation Issuance Documents” means a Series Resolution, loan agreement, indenture or other document, as the case may be, authorizing and issuing a series of Subordinated Obligations.

“Subordinated Obligations” means Indebtedness of the System that by the terms thereof is specifically junior and subordinate to the Parity Obligations with respect to payment of principal and interest thereon, and is evidenced by an instrument containing provisions substantially the same as those in Exhibit A.

“Supplemental Resolution” means any resolution adopted by the Board supplementing or amending this Resolution, any Series Resolution or any Supplemental Resolution.

“Surplus Fund” means the fund established in Section 5(e) hereof.

“System” shall mean the Municipal Communications Utility System of the Utility and all properties of every nature hereinafter owned by the System comprising part of or used as a part of the System, including all improvements and expansions to the System, including all real and personal property and all appurtenances, contracts, leases, franchises and other intangibles.

“United States Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service, and such obligations are held in a custodial or trust account for the benefit of the System.

“Utility” shall mean the Indianola Municipal Utilities.

Section 2. Authorization of Obligations; Conditions Precedent. Pursuant to authority granted in Chapter 384 of the Code of Iowa, as amended, and in compliance with all applicable provisions of the laws of the State of Iowa, the City, acting by and through the Board, has the authority to borrow money secured by the System’s Net Revenues.

There is hereby authorized to be issued or incurred, from time to time, Obligations of the City, acting by and through the Board, in one or more series, to carry out the lawful purposes of the System. The Obligations shall be issued or incurred subject to the terms, conditions and limitations established in this Resolution and shall be issued pursuant to a Series Resolution and other appropriate Obligation Issuance Documents.

Each Series Resolution or, if applicable, Obligation Issuance Documents, authorizing the issuance of a Series of Obligations shall include (a) the form of the Obligation or reference thereto, (b) the terms of the Obligations, including interest rate, principal and interest payment dates, (c) the security for the Obligations, (d) redemption and/or prepayment terms and (e) other terms and conditions determined at that time of the sale, issuance and/or incurrence of such Obligations.

Section 3. Source of Payment from Net Revenues. All Parity Obligations and the interest thereon shall be payable out of the Net Revenues and shall be a first lien on future Net Revenues, and may also be payable from other funds and accounts established or provided for pursuant to the Parity Obligation Issuance Documents and pledged to the payment thereof.

All Subordinate Obligations and interest thereon shall be payable out of the Net Revenues on a subordinate or junior basis to the Parity Obligations and shall be a junior lien on future Net Revenues, and may also be payable from other funds and accounts established or provided for pursuant to the Subordinated Obligation Issuance Documents and pledged to the payment thereof.

The Obligations shall not be general obligations of the City, the System, the State of Iowa or any political subdivision of the State of Iowa, shall not be payable in any manner by taxation, and neither the City, the System, the State of Iowa, nor any other political subdivision of the State of Iowa shall be in any manner liable by reason of the failure of the Net Revenues to be sufficient for the payment of the Obligations.

Section 4. Equality of First Lien-Parity Obligations; Equality of Subordinate Lien-Subordinated Obligations. The timely payment of principal of and interest on the Parity Obligations and the payment obligations under any Parity Obligations and related Parity Obligation Issuance Documents shall be secured equally and ratably on a first lien basis by the future Net Revenues without priority by reason of number or time of sale, execution or delivery; and the future Net Revenues are hereby irrevocably pledged to the timely payment of the same as the same shall become due.

The timely payment of principal of and interest on the Subordinate Obligations and the payment obligations under any Subordinate Obligations and related Subordinate Obligation Issuance Documents shall be secured equally and ratably on a subordinate lien basis by the future Net Revenues without priority by reason of number or time of sale, execution or delivery; and the future Net Revenues are hereby irrevocably pledged to the timely payment of the same as the same shall become due on a subordinate basis to the payment of the Parity Obligations.

Section 5. Allocation of Revenues; Establishment of Revenue Fund. So long as this Resolution is in effect, the Gross Revenues of the System shall be deposited as collected in a fund to be known as the Revenue Fund (the "Revenue Fund"). The Gross Revenues shall be applied from time to time to pay Operating Expenses of the System, and shall then be applied in the following order of priority:

(a) the Net Revenues shall be applied to pay the principal of and interest on Parity Obligations as the same are due (whether by maturing, redemption or acceleration) and to make the deposits required to be made into any Parity Obligation Sinking Funds established in accordance with the applicable Parity Obligation Issuance Documents. In the event that there are not sufficient amounts on deposit in the Revenue Fund to make all of such payments and deposits when due, the amount on deposit in the Revenue Fund shall be applied to make such payments and deposits on a pro rata basis in accordance with the outstanding principal amount of such Parity Obligations and as soon as additional Net Revenues are available, the same shall be used to make any unpaid payments and to make up any deficiencies to the Parity Obligation Sinking Funds.

(b) Any balance of the Net Revenues remaining in the Revenue Fund in excess of the payments hereinbefore specified in subparagraph (a) shall be used to make the deposits required to be made into any Parity Obligation Debt Service Reserve Funds established in accordance with applicable Parity Obligation Issuance Documents either to build up the amounts therein to the required reserve deposit or to make up any deficiencies therein created by transfers or valuations. In the event that there are not sufficient amounts on deposit in the Revenue Fund to make all of such deposits when due, the amount on deposit in the Revenue Fund shall be applied to make such deposits on a pro rata basis in accordance with the outstanding principal amount of such Parity Obligations and as soon as additional Net Revenues are available, the same shall be used to make up any deficiencies from previous deposits to the Parity Obligation Debt Service Reserve Funds.

(c) Any balance of the Net Revenues remaining in the Revenue Fund in excess of the payments hereinbefore specified in subparagraphs (a) and (b) shall be used to make the deposits required to be made into any Parity Obligation Special Purpose Funds established in accordance with applicable Parity Obligation Issuance Documents either to build up the amounts therein to the required reserve deposit or to make up any deficiencies therein created by transfers or valuations. In the event that there are not sufficient amounts on deposit in the Revenue Fund to make all of such deposits when due, the amount on deposit in the Revenue Fund shall be applied to make such deposits on a pro rata basis in accordance with the outstanding principal amount of the respective Parity Obligations and as soon as additional Net Revenues are available, the same shall be used to make up any deficiencies from previous deposits to Parity Obligation Special Purpose Funds.

(d) Any balance of the Net Revenues remaining in the Revenue Fund in excess of the payments hereinbefore specified in subparagraphs (a), (b) and (c) shall be applied to pay the principal of and interest on any Subordinated Obligations as the same are due and to make the deposits required to be made into any funds and accounts established in accordance with the Subordinated Obligation Issuance Documents. In the event that there are not sufficient amounts on deposit in the Revenue Fund to make all of such deposits when due, the amount on deposit in the Revenue Fund shall be applied to make such deposits on a pro rata basis in accordance with the outstanding principal amount of the respective Subordinated Obligations and as soon as additional Net Revenues are available, the same shall be used to make up any deficiencies.

(e) Any balance of the Net Revenues remaining in the Revenue Fund in excess of the payments hereinbefore specified in subparagraphs (a), (b), (c), (d) may be applied to for any lawful purpose and shall be considered "Surplus Revenues" and deposited in a fund to be known as the Surplus Fund (the "Surplus Fund").

All income derived from investments of the Revenue Fund shall be regarded as revenues of the System, and shall accrue to the Revenue Fund.

Section 6. Rates and Charges. There has heretofore been established as required by law, just and equitable fees, rates and charges for the use of the services rendered by the System.

So long as any of the Parity Obligations are outstanding, the Board shall operate the System on a revenue producing basis and charge such fees and rates for its services and exercise such skill and diligence as to provide income from the System together with other available funds sufficient to pay promptly Debt Service Payments, all Operating Expenses of the System, maintain a Debt Service Coverage Ratio for each Fiscal Year equal to at least 1.10:1.00 commencing with the Fiscal Year ending in 2023 and provide all other payments required to be made by it hereunder to the extent permitted by law. In addition, the Board shall, from time to time as often as necessary and to the extent permitted by law, revise its rates, fees and charges in such manner as may be necessary or proper to comply with the provisions of this Section.

If the Debt Service Coverage Ratio is less than 1.10:1.00 for any Fiscal Year beginning with the Fiscal Year ending in 2023, then the Board shall (i) retain an Independent Consultant to make recommendations with respect to the rates, fees and charges of the System and the Board's methods of operation and other factors affecting its financial condition in order to increase the Debt Service Coverage Ratio for subsequent Fiscal Years to at least 1.10:1.00, and (ii) notify any Parity Obligation Holder requesting such notification that the Board is required by this Section to retain an Independent Consultant; provided, however, the Debt Service Payments of any Indebtedness issued to finance capital improvements to or for the System shall not be included in the calculation of Debt Service Coverage Ratio until the Fiscal Year subsequent to the Fiscal Year the capital improvements are placed in service. A copy of the report of such Independent Consultant and recommendations, if any, shall be filed with any Parity Obligation Holder requesting such information. So long as the Board retains an Independent Consultant and complies with such Independent Consultant's reasonable recommendations to the extent not prohibited by law, and the Debt Service Coverage Ratio is not less than 1.00:1.00, then no default shall be declared with respect to this Section, provided all required payments are being timely made under the Parity Obligations.

Section 7. Covenants Regarding the Operation of the System. The Board hereby covenants and agrees with each and every holder of any Parity Obligations:

(a) Maintenance and Efficiency. That the Board will maintain the System in good condition and operate it in an efficient manner and at a reasonable cost as a revenue producing undertaking.

(b) Rates. That on or before the beginning of each Fiscal Year, the Board will adopt or continue in effect rates for all services rendered by the System sufficient to produce revenues for the next succeeding Fiscal Year sufficient to meet the requirements of Section 6 of this Resolution.

(c) Insurance. That the Board shall maintain insurance on the insurable portions of the System of a kind and in an amount which normally would be carried by private companies engaged in a similar kind of business, including, but not limited to, comprehensive general public liability insurance and workers' compensation insurance. The Board will keep proper books of record and account, separate from all other records and accounts, showing the complete and correct entries of all transactions relating to the System, and the owners any Parity Obligations shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Board relating thereto.

(d) Accounting and Audits. That the Board will cause to be kept proper books and accounts of the System and in accordance with GAAP. The Board shall furnish financial statements/information to any Parity Obligation Holder as required by any respective Parity Obligation Issuance Document.

(e) State Laws. That the Board will faithfully and punctually perform all duties with reference to the System required by laws of the State of Iowa, including the making and collecting of reasonable and sufficient rates for services rendered by the System as above provided, and will segregate the revenues of the System and apply said revenues to the funds specified in this Resolution and any Parity Obligation Issuance Documents.

(f) Fidelity Bond. That the Board shall maintain fidelity bond coverage in amounts which normally would be carried by private companies engaged in a similar kind of business on each officer or employee having custody of funds of the System.

(g) Budget. That the Board will adopt a budget of revenues and current expenses on or before the end of each Fiscal Year for the ensuing Fiscal Year, and will file copies of such budgets, and any amendments thereto, with all Parity Obligation Holders requesting such information. Such budget shall take into account revenues and current expenses during the current and last preceding Fiscal Years. For any increases in the operating budget, the Board shall follow its normal budgeting procedures.

(h) Abandonment/Sale of the System. That so long as any Parity Obligations are outstanding, the System will not be abandoned or the operation thereof discontinued (by sale, lease or otherwise) unless provision for the payment of the principal of, premium, if any and interest on such Parity Obligations and the discharge and satisfaction of the covenants, liens and pledges entered into, created or imposed by this Resolution and any Parity Obligation Issuance Documents has occurred; provided, however, that the Board may dispose of any property which in the judgment of the Board, or as the duly constituted body as then may be charged with the operation of the System, is no longer useful or profitable in the operation of the System nor essential to the continued operation thereof and when the sale thereof will not operate to reduce the revenues to be derived from the operation of the System.

Section 8. Events of Default; Remedies; Cooperation of Parity Obligation Holders. The failure by the Board to observe or perform any covenant, condition or agreement on its part contained in this Resolution and any Parity Obligation Issuance Document, shall constitute an event of default. Except as herein expressly limited, any Parity Obligation Holders shall have and possess all the rights of action and remedies afforded by the common law, the Constitution and statutes of the State of Iowa, and of the United States of America, for the enforcement of payment of any Parity Obligations, and of the pledge of the Net Revenues made hereunder and of all covenants of the Board hereunder, including, but not limited to the right to a proceeding in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by Iowa law and this Resolution, or to obtain the appointment of a receiver to take possession of or operate the System and to perform the duties required by Iowa law and this Resolution or employ the services of an Independent Consultant.

The Parity Obligation Holders acknowledge the parity relationship between the Parity Obligations and the rights of the Parity Obligation Holders. The Parity Obligation Holders agree to cooperate with each other in the pursuance of remedies hereunder, and under the Parity Obligation Issuance Documents upon the occurrence of an Event of Default. Notwithstanding anything in any Parity Obligation Issuance Documents to the contrary, any monies received pursuant to any right given or action taken under this Master Resolution or any Parity Obligation Issuance Documents shall be applied first to payment to the Parity Obligation Holders of all costs and expenses of the proceedings resulting in the collection of such money and of the expenses, liabilities and advances incurred or made by the Parity Obligation Holders and any remaining amounts shall be applied to the payment of the interest on and principal of any Parity Obligations then due (whether by maturity, redemption or acceleration) and if such remaining amounts are not sufficient to make all of such payments such amounts shall be applied on a pro rata basis in accordance with the Outstanding principal amounts of such Parity Obligations for further application in accordance with the provisions of the respective Parity Obligation Issuance Documents.

Section 9. Restrictions as to Incurrence of Indebtedness as Parity Obligations; Indebtedness as Subordinated Obligations. No bonds, notes or obligations of any kind or nature payable from or enjoying a lien or claim on the property or revenues of the System shall be issued having priority over any Parity Obligations.

So long as any Parity Obligations are Outstanding, the City, acting by and through the Board, shall not incur any Indebtedness as additional Parity Obligations except as authorized by any one of the following subsections of this Section:

(a) Long-Term Indebtedness. Long-Term Indebtedness may be incurred as Parity Obligations if prior to incurrence thereof a statement of an Independent Auditor or independent financial consultant is obtained stating that the average Net Revenues for the preceding three Fiscal Years for which audited financial reports are available (with adjustments as hereinafter provided) were equal to at least 1.10 times the maximum annual debt service on the then outstanding Parity Obligations and the Parity Obligations then proposed to be issued. For purposes of this subsection, the Net Revenues may be adjusted so as to reflect any changes in the amount of such Net Revenues which would have resulted had any revision of the schedule of rates or charges imposed at or prior to the time of the issuance of any proposed Parity Obligations been in effect during such preceding Fiscal Year.

(b) Refunding Indebtedness. Indebtedness may be incurred as Parity Obligations for the purpose of refunding (whether in advance of maturity or otherwise) (referred to as "Refunding Indebtedness") any outstanding Parity Obligations, if taking into account the issuance of the proposed Refunding Indebtedness and the application of the proceeds thereof and any other funds available to be applied to such refunding, the maximum annual debt service on all Parity Obligations during the period during which such Refunding Indebtedness will be outstanding will not be increased by more than 10%.

(c) Short-Term Indebtedness. Short-Term Indebtedness may be incurred as Parity Obligations if, immediately after the incurrence of such Short-Term Indebtedness, the total principal amount of outstanding Short-Term Indebtedness under this Subsection will not exceed 25% of the System's Gross Revenues for the most recent Fiscal Year for which audited financial statements are available.

(d) The City, acting by and through the Board, may incur Indebtedness as Subordinated Obligations without limitation.

Section 10. Calculation of Debt Service.

For purposes of the various calculations under this Resolution, the amount of Indebtedness of the System, the amortization schedule of such Indebtedness and the Debt Service Payments with respect to such Indebtedness shall be calculated in accordance with the actual amortization schedule for such Indebtedness, except as follows:

(i) *Balloon Indebtedness*. "Balloon Indebtedness" means Long-Term Indebtedness, 25% or more of the original principal of which becomes due and payable (either by maturity or mandatory redemption), during the same Fiscal Year, if such principal becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such Fiscal Year. The Debt Service Payments on Balloon Indebtedness may be deemed to be payable as follows:

(x) If the Board delivers an Officer's Certificate that establishes an amortization schedule for any such Indebtedness, which provides for payments of principal and interest for each Fiscal Year that are sufficient to make any actual payments required to be made in such Fiscal Year by the terms of such Indebtedness; and the Board agrees in such certificate that the Board will deposit for each Fiscal Year with a bank or trust company (pursuant to an agreement between the City, acting by and through the Board, and such bank or trust company), the amount of principal shown on such amortization schedule net of any amount of principal actually paid on such Indebtedness during such Fiscal Year (other than from amounts on deposit with such bank or trust company), which deposit shall be made prior to any such required actual payment during such Fiscal Year if the amounts so on deposit are intended to be the source of such actual payments, then such Indebtedness may be deemed to be payable in accordance with the terms of such amortization schedule and agreement; or

(y) Such Indebtedness may be deemed to be Long-Term Indebtedness payable on a level annual debt service basis for 15 years from any year in which 25% or more of the original principal of which becomes due and payable, but not more than 30 years from the date of issuance or incurrence of such Indebtedness, bearing interest on the unpaid principal balance at the rate equal to the rate set forth in the 30-year Bond Buyer Revenue Bond Index most recently published in The Bond Buyer (or such other index as set forth and deemed reasonable in a report of an Independent Consultant).

(ii) *Capital Appreciation Indebtedness*. The principal amount of Indebtedness that constitutes "capital appreciation indebtedness" (defined below) shall be deemed to be the "accreted value" (defined below) thereof as of the relevant date. "Capital appreciation indebtedness" means any Long-Term Indebtedness for which interest is payable only at the maturity of such Indebtedness, upon the prepayment or redemption of such Indebtedness before maturity, or upon the conversion of such Indebtedness to Indebtedness with interest payable periodically in installments prior to maturity. "Accreted value" means with respect to any capital appreciation indebtedness (a) as of any "valuation date" (defined below), the amount set forth in the documents authorizing such Indebtedness as the value of such Indebtedness on such valuation date and (b) as of any date other than a valuation date the sum of (i) the accreted value on the next preceding valuation date and (ii) the product of (A) a fraction, the numerator of which is the number of days having elapsed from the preceding valuation date and the denominator of which is the number of days from such preceding valuation date to the next succeeding valuation date and (B) the difference between the accreted values for such valuation dates. "Valuation date" means with respect to any capital appreciation indebtedness the date or dates set forth in the documents authorizing such Indebtedness on which specific accreted values are assigned to the capital appreciation indebtedness.

(iii) *Capital Leases*. The principal amount of Indebtedness in the form of a "capital lease" (defined below) shall be deemed to be the amount, as of the date of determination, at which the aggregate "net rentals" (defined below) due and to become due under such capital lease would be reflected as a liability on the balance sheet of the lessee, and the Debt Service Payments on a capital lease for the period of time for which calculated shall be deemed to be the aggregate amount of net rentals to be payable under such capital lease during such period. "Capital lease" means any lease of real or personal property that is capitalized on the balance sheet of the lessee under GAAP. "Net rentals" means all fixed rents (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the property other than upon termination of the lease for a default thereunder) payable under such lease excluding any amounts required to be paid by the lessee (whether or not designated as rents or additional rents) on account of maintenance, repairs, insurance, interest, taxes and similar charges. Net rentals for any future period under any so called "percentage lease" shall be computed on the basis of the amount reasonably estimated to be payable thereunder for such period, but in any event not less than the amount paid or payable thereunder during the immediately preceding period of the same duration as such future period; provided that the amount estimated to be payable under any such percentage lease shall in all cases recognize any change in the applicable percentage called for by the terms of such lease.

(iv) In determining the Debt Service Payments on any Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Indebtedness and which for any future period of time is not susceptible of precise determination, the interest rate on such Indebtedness for any period prior to the date of calculation or for which the interest rate has been determined shall be the actual interest payable during such period, and for each year in which such Indebtedness is Outstanding and for which the actual interest rate cannot be determined, the interest rate on such Indebtedness for the period of determination shall be deemed to be the average annual rate of interest payable on such Indebtedness during the 12 months immediately preceding the date of calculation, or if such Indebtedness is to be incurred or was incurred less than 12 months preceding such date, (1) if the Indebtedness bears interest at tax-exempt rates, an interest rate equal to the 12-month average of the Bond Market Association Index (as most recently published in The Bond Buyer prior to the issuance of the Indebtedness), unless such index is no longer published in The Bond Buyer, in which case the index to be used in its place shall be that index which an Authorized Representative determines most clearly replicates such index set forth in an Officer's Certificate delivered to the Trustee, (2) if the Indebtedness bears interest at taxable rates, an interest rate equal to the rate of the thirty (30) day Secured Overnight Financing Rate (SOFR) or equivalent index (as most recently published prior to the issuance of the Indebtedness).

(v) *Escrowed Deposits*. Such payments shall be excluded from Debt Service Payments to the extent that cash, including proceeds of Indebtedness or Defeasance Obligations (including, where appropriate, the earnings or other increment to accrue thereon) that are on deposit in an irrevocable escrow or trust account with a third party escrow agent or trustee and are required to be applied to pay all or a portion of the principal of and interest on, as the same shall become due, any Indebtedness which would otherwise be considered Outstanding and such amounts so required to be applied are sufficient to pay such principal and interest.

Section 11. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the City, acting by and through the Board, and the holder or holders of the Parity Obligations, and after the issuance of any of the Parity Obligations, no change, variation or alteration of any kind in the provisions of this Resolution shall be made in any manner, except as provided in Section 12 and Section 13 hereof, until such time as all of the Parity Obligations, and interest due thereon, shall have been satisfied and discharged as provided in this Resolution.

Section 12. Amendments to Resolution Not Requiring Consent of Owners of the Parity Obligations.

For any one or more of the following purposes, without the consent of or notice to the owners any Parity Obligations, and at any time or from time to time this Resolution may be amended, modified or supplemented by the Board:

(a) to cure any ambiguity or formal defect or omission in this Resolution;

(b) to grant to or confer for the benefit of the owners of the Parity Obligations any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the owners of the Parity Obligations;

(c) to assign and pledge under this resolution additional revenues, properties or collateral;

(d) to provide for the refunding or advance refunding of any Indebtedness;

(e) to modify, amend or supplement this resolution in such manner as to permit continued compliance with the provisions of the Internal Revenue Code in order to maintain the tax exempt status of any Parity Obligations;

(f) to provide for the issuance or incurrence of Parity Obligations; and

(g) to make any other change that, in the judgment of the Board, does not materially adversely affect the rights of the owners of any Parity Obligations.

Section 13. Modification of Resolution Requiring Consent of Holders of the Parity Obligations. In addition to amendments to this Resolution authorized by Section 12 hereof, this Resolution may be amended from time to time if such amendment shall have been consented to by the Holders of not less than a majority in principal amount of the Parity Obligations at any time outstanding, but this Resolution may not be so amended without the consent of the Holders of 100% in principal amount of the Parity Obligations at the time outstanding in such manner as to:

(a) Make any change in the maturity or interest rate of the Parity Obligations, or modify the terms of payment of principal of or interest on the Parity Obligations or any of them or impose any conditions with respect to such payments;

(b) Materially affect the rights of the Holders of less than all of Parity Obligations then outstanding; and

(c) Reduce the percentage of the principal amount of Parity Obligations, the consent of the Holders of which is required to effect a further amendment.

Whenever the Board shall propose to amend this Resolution under the provisions of this Section, it shall cause notice of the proposed amendment to be mailed to each Parity Obligation Holder by electronic means, or certified or registered mail. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory Resolution is on file in the office of the Secretary of the Board.

Whenever at any time within one year from the date of the mailing of said notice there shall be filed with the Secretary of the Board an instrument or instruments executed by the Parity Obligation Holders of at least a majority (or 100% in the case of certain amendments) in aggregate principal amount of the Parity Obligations then outstanding as in this Section defined, which instrument or instruments shall refer to the proposed amendatory Resolution described in said notice and shall specifically consent to and approve the adoption thereof, thereupon, but not otherwise, the Board may adopt such amendatory Resolution and such Resolution shall become effective and binding upon the Holders of all of the Parity Obligations.

Any consent given by the Holder of a Parity Obligation pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the instrument evidencing such consent and shall be conclusive and binding upon all future Holders of the same Parity Obligation during such period. Such consent may be revoked at any time after six months from the date of such instrument by the Holder who gave such consent or by a successor in title by filing notice of such revocation with the Secretary of the Board.

The fact and date of the execution of any instrument under the provisions of this Section may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction that the person signing such instrument acknowledged before him or her the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

The amount and numbers of the Parity Obligations held by any person executing such instrument and the date of his or her holding the same may be proved by an affidavit by such person or by a certificate executed by an officer of a bank or trust company showing that on the date therein mentioned such person had a deposit with such bank or trust company the Parity Obligations described in such certificate.

Section 14. Severability. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions.

Section 15. <u>Repeal of Conflicting Resolutions and Orders and Effective Date</u>. All other resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution area, to the extent of such conflict, hereby repealed; and this Resolution shall be in effect from and after its adoption.

Adopted and approved this 12th day of September, 2022.

____________________________________
Chairperson, Board of Trustees
Indianola Municipal Utilities

Attest:

____________________________________
Board Secretary, Board of Trustees
Indianola Municipal Utilities

STATE OF IOWA
COUNTY OF WARREN SS:
INDIANOLA MUNICIPAL UTILITIES

I, the undersigned, do hereby certify that I have in my possession or have access to the complete records of the Board of Trustees (the "Board") of the Indianola Municipal Utilities and of its officers; and that I have carefully compared the transcript hereto attached with the aforesaid corporate records and that said transcript hereto attached is a true, correct and complete copy of all of the corporate records showing the action taken with respect to the matters set forth therein by the Board on the date shown therein, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that such meeting was duly and publicly held in accordance with the Notice of Meeting and tentative agenda and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Board and the provisions of Chapter 21, Code of Iowa, as amended, upon reasonable advance notice to the public and media at least twenty-four (24) hours prior to the commencement of the meeting as required by said law and with members of the public in attendance. I further certify that the individuals named in the attached proceedings were on the date thereof duly and lawfully possessed of their respective offices as indicated therein, that no Board vacancies existed except as may be stated in said proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization or existence of the City, the Utility, the System or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand hereto affixed this 12th day of September, 2022.

____________________________________
Board Secretary, Board of Trustees
Indianola Municipal Utilities

EXHIBIT A
SUBORDINATED OBLIGATIONS PROVISIONS

Any issue of Subordinated Obligations shall be evidenced by instruments, or issued under an indenture or other document, containing provisions for the subordination of such Indebtedness substantially as follows (the term “debentures” being, for convenience, used in the provisions set forth below to designate the instruments issued to evidence Subordinated Obligations and the term “this indenture” to designate the instrument, resolution, indenture or other document containing such provisions):

* * *

All debentures issued under this indenture shall be issued subject to the following provisions and each person taking or holding any such debenture whether upon original issue or upon transfer or assignment thereof accepts and agrees to be bound by such provisions.

All debentures issued hereunder and any coupons thereto appertaining shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right to the prior payment in full of Superior Indebtedness as defined in this Section. For all purposes of this Section, the term “Superior Indebtedness” shall mean any Parity Obligations issued pursuant to the Master Resolution, as supplemented and modified to the date hereof, or as the same may hereafter from time to time be further supplemented and modified, or other Parity Obligation Issuance Document.

No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, unless full payment of amounts then due and payable for principal, premium, if any, sinking funds and interest on Superior Indebtedness is made or duly provided for in accordance with the terms of such Superior Indebtedness. No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, if, at the time of such payment or application or immediately after giving effect thereto, (i) there shall exist a default in the payment of principal, premium, if any, sinking funds or interest with respect to any Superior Indebtedness, or (ii) there shall have occurred any other event of default with respect to any Superior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the Owners thereof to accelerate the maturity thereof and such event of default is not cured or waived or shall not have ceased to exist.

Upon any acceleration of maturity of the principal amount due on the debentures or any payment or distribution of any kind or character, whether in cash, property or securities, upon any dissolution or winding up or total or partial liquidation, reorganization or arrangement of the Utility or the System, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all principal, premium, if any, and interest due or to become due upon all Superior Indebtedness shall first be paid in full, or payment thereof provided for in accordance with the terms of such Superior Indebtedness, before any payment is made on account of the principal, premium, if any, or interest on the indebtedness evidenced by the debentures, and upon any such dissolution or winding up or liquidation, reorganization or arrangement, any payment or distribution of any kind or character, whether in cash, property or securities, to which the Owners of the debentures or the trustee or paying agent under this indenture would be entitled, except for the provisions hereof, shall be paid by the Board, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, to pay all Superior Indebtedness in full, before any payment or distribution is made to the Owners of the indebtedness evidenced by the debentures or under this indenture.

In the event that, in violation of any of the foregoing provisions, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received under this indenture or by the Owners of the debentures before all Superior Indebtedness is paid in full, or provision made for such payment in accordance with the terms of such Superior Indebtedness, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered as necessary for application to the payment of all Superior Indebtedness remaining unpaid to the extent necessary to pay all such Superior Indebtedness in full in accordance with its terms.

No present or future Owner of Superior Indebtedness shall be prejudiced in his right to enforce subordination of the indebtedness evidenced by the debentures by any act or failure to act on the part of the Board or anyone in custody of its assets or property.

The foregoing subordination provisions shall be for the benefit of the Owners of Superior Indebtedness and may be enforced against the Owners of debentures or any trustee thereof; provided, however: (i) that the foregoing provisions are solely for the purpose of defining the relative rights of the Owners of Superior Indebtedness on the one hand and the Owners of the subordinated debt on the other hand, and that nothing herein shall impair, as between the City, acting by and through the Board, and the Owners of the subordinated debt, the obligation of the City, acting by and through the Board, which is unconditional and absolute, to pay to the Owners thereof the principal thereof, premium, if any, and interest thereon in accordance with its terms, nor shall anything herein prevent the Owners of the subordinated debt or the trustee on their behalf from exercising all remedies otherwise permitted by applicable law or hereunder upon default hereunder, subject to the rights set forth above of the Owners of Superior Indebtedness to receive cash, property or securities otherwise payable or deliverable to the Owners of the subordinated debt, (ii) that upon any payment or distribution of assets of the System of the character referred to in the fourth paragraph of the foregoing provisions, the trustee or paying agent under this indenture shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation, reorganization or arrangement proceedings are pending, and upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making any such payment or distribution, delivered to said trustee for the purpose of ascertaining the persons entitled to participate in such distribution, the Owners of Superior Indebtedness and other indebtedness secured by the System's Net Revenues, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to the foregoing provisions, and

(iii) that the trustee under this indenture and any paying agent hereunder shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by such trustee or such paying agent, unless and until such trustee or such paying agent, as the case may be, shall have received written notice thereof from the Board or from one or more Owners of Superior Indebtedness.

INDIANOLA MUNICIPAL UTILITIES
IMU
Electric • Communications • Water



# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of Communications Revenue and Refunding Notes, Series 2022A, and other documents related to the notes.

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**Recommendation:** Roll call is in order.

**Attachments:** 1. Proc Series Issuance 2022A (Tax Exempt) (Indianola MU #2 2022)-v14

SERIES RESOLUTION TO APPROVE SERIES 2022A NOTES

517813-2

Indianola, Iowa

September 12, 2022

The Board of Trustees of the Indianola Municipal Utilities, Indianola, Iowa, met on September 12, 2022, at 5:30 o'clock p.m., at the Council Chambers, City Hall, Indianola, Iowa.

The meeting was called to order by the Chairperson, and the roll was called showing the following Board Members present and absent:

Present: ____________________________________________________________

Absent: ________________________________________.

***Other Business ***

Board Member ______________________ introduced the resolution next hereinafter set out and moved its adoption, seconded by Board Member ______________________; and after due consideration thereof by the Board, the Chairperson put the question upon the adoption of the resolution, and the roll being called, the following named Board Members voted:

Ayes: ____________________________________________________

Nays: _________________________________________.

Whereupon, the Chairperson declared said resolution duly adopted, as follows:

***Other Business ***

On motion and vote the meeting adjourned.

RESOLUTION NO. ___

Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of Communications Revenue and Refunding Notes, Series 2022A and other documents related to the Notes.

WHEREAS, the City of Indianola (the "City"), in Warren County, State of Iowa, did heretofore establish the Indianola Municipal Utilities (the "Utility") in and for the City; and

WHEREAS, the management and control of the Utility are vested in the Board of Trustees (the "Board") of the Utility; and

WHEREAS, the City, acting by and through the Board (referred to herein as the "Issuer"), is authorized and empowered by Chapter 384 of the Code of Iowa (the "Act") to borrow money for the Municipal Communications Utility System (the "System") of the Utility and the Board has adopted a master resolution (the "Master Resolution") authorizing the issuance from time to time of Parity Obligations (as defined in the Master Resolution) to borrow money secured by a first lien on the System's Net Revenues (as defined in the Master Resolution); and

WHEREAS, pursuant to a resolution (the "Series 2017A Note Resolution") adopted and approved by the Board on July 24, 2017, the City, acting by and through the Board, authorized the issuance of $6,287,000 Communications Utility Revenue Capital Loan Notes, Series 2017A, dated August 10, 2017 (the "Series 2017A Notes") to finance improvements to the System, a portion of which remain outstanding, and the outstanding Series 2017A Notes are optional for redemption on any date subject to the provisions of the Series 2017A Note Resolution; and

WHEREAS, pursuant to a resolution (the "Series 2017B Note Resolution") adopted and approved by the Board on July 24, 2017, the Issuer authorized the issuance of $3,000,000 Taxable Communications Utility Revenue Capital Loan Notes, Series 2017B, dated August 10, 2017 (the "Series 2017B Notes" and, together with the Series 2017A Notes, the "Prior Notes") to finance improvements to the System, a portion of which remain outstanding, and the Series 2017B Notes are optional for redemption on any date subject to the provisions of the Series 2017B Note Resolution; and

WHEREAS, the Board has developed a financing plan which includes financing the costs of a Project (as defined herein) and refunding the outstanding Prior Notes, and, pursuant to the provisions of Section 384.24A of the Code of Iowa, a public hearing notice duly published and a hearing held thereon on August 8, 2022, the Issuer has heretofore determined to enter into one or more loan agreements in the aggregate principal amount not to exceed $12,200,000 and to issue one or more series of communications revenue notes secured by the System's Net Revenues; and

WHEREAS, in order to provide funds to finance the Project, refund a portion of the Series 2017A Notes and pay costs of issuance, the Issuer deems it necessary and advisable to enter into the hereinafter defined Loan Agreement and to borrow money in the amount of $7,976,000 and to evidence the Issuer's obligation to repay the amount borrowed through the issuance of a like principal amount of Communications Revenue and Refunding Notes, Series 2022A (the "Series 2022A Notes"); and

WHEREAS, arrangements have been made for the sale of the Series 2022A Notes to TruBank, Indianola, Iowa (the "Bank") pursuant to the Bank's bid proposal; and

WHEREAS, Section 2 of the Master Resolution authorizes the Board to adopt a Series Resolution (as defined in the Master Resolution) to provide for the issuance of Parity Obligations and this Series Resolution constitutes a Series Resolution under the Master Resolution; and

WHEREAS, the obligations of the Issuer under the Series 2022A Notes and the Loan Agreement shall be payable solely and only from the Net Revenues of the System and certain funds and accounts created and pledged under the this Series Resolution and the Master Resolution; and

WHEREAS, the following action is now considered to be in the best interests of the Issuer;

NOW, THEREFORE, Be It Resolved by the Board of the Indianola Municipal Utilities, as follows:

Section 1. Definitions. Terms used herein and not defined herein shall have the meaning given to them in this Series Resolution and the Master Resolution unless the text expressly or by necessary implication requires otherwise:

"Business Day" means any day other than a Saturday, Sunday, legal holiday or a day on which financial institutions are closed in Iowa.

"Closing Date" shall mean the date of delivery of the Series 2022A Notes, anticipated to be September 28, 2022, with any final changes to such date set forth in the Loan Agreement.

"Loan" shall mean the loan made pursuant to the Loan Agreement and evidenced by the Series 2022A Notes.

"Loan Agreement" means the loan agreement between the Issuer and the Bank related to the Series 2022A Notes.

"Notes" or "Series 2022A Notes" means the $7,976,000 Communications Revenue and Refunding Notes, Series 2022A.

"Paying Agent" shall mean the Board Secretary or such successor and assigns, as approved by the Utility.

"Series 2017A Notes" have the meaning in the preamble hereto.

"Series 2022A Sinking Fund" means the fund by that name created pursuant to Section 14 hereof.

"Series Resolution" or "Resolution" means this resolution.

Section 2. Loan Authorization; Authorization for Execution and Delivery of Documents. Following the adoption of this Series Resolution and pursuant to Chapter 384 of the

Code of Iowa, the Board is hereby authorized to execute and deliver the Loan Agreement with the Bank in the form which has been placed on file with the Board providing for a Loan in the aggregate amount of $7,976,000 for the purpose or purposes set forth in the preamble hereof. The Chairperson and Board Secretary are hereby authorized to execute and deliver the Loan Agreement on behalf of the Issuer in the form presented to the Board, with final terms as determined by the Board and the General Manager and Finance/HR Director of the Utility.

The Chairperson, Board Secretary and City Treasurer are each authorized to execute and deliver the Series 2022A Notes, any and all agreements, documents and instruments required related to the issuance of the Series 2022A Notes and to carry out the purposes set forth in this Series Resolution, including but not limited to any tax certificates, closing certificates and purchase agreements.

Section 3. Registrar/Paying Agent. The Board Secretary is hereby designated as the Registrar and Paying Agent for the Series 2022A Notes and may be hereinafter referred to as the "Registrar" or the "Paying Agent" in such capacities.

Section 4. Source of Payment of the Series 2022A Notes. The Series 2022A Notes, when issued, will be Parity Obligations under the Master Resolution and shall be payable solely from the Net Revenues of the System, and certain funds and accounts created and pledged under this Series Resolution and the Master Resolution.

Section 5. Series 2022A Notes Details; Form of Series 2022A Notes. Principal of the Series 2022A Notes shall bear interest at the rate of 3.350% per annum. Interest on the Series 2022A Notes is payable semi-annually on June 1 and December 1 of each year, commencing June 1, 2023, and will be calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal of the Series 2022A Notes is payable in annual installments on June 1 of each year, commencing on June 1, 2023, in the respective installment amounts through and including the maturity date, as set forth in the Series 2022A Notes. All payments shall be applied first to the payment of interest due and next to the reduction of principal. The Chairperson, Board Secretary, General Manager and Finance/HR Director of the Utility are each authorized individually and collectively to finalize the terms of the Series 2022A Notes, including the final amortization schedule, in coordination with its Bond Counsel (as defined in the Master Resolution) and the Bank.

Payment of both principal of and interest on the Series 2022A Notes shall be made to the registered owners appearing on the registration books of the Issuer at the close of business on the fifteenth day of the month next preceding the payment date and shall be paid by wire transfer pursuant to wire instructions provided by the Bank or in such other manner communicated in writing by the Bank to the Issuer. *After the payment of the final installment of principal and interest on a Series 2022A Note, the Bank shall return the Series 2022A Note to the Paying Agent.*

The Issuer may not prepay the principal of the Series 2022A Notes prior to June 1, 2028. The Issuer reserves the right to prepay principal of the Series 2022A Notes in *whole or in part* on June 1, 2028, or on any date thereafter upon terms of par plus accrued interest upon not less than thirty (30) days prior written notice to the Bank. Any prepaid principal shall cease to bear interest on each prepayment date.

The Series 2022A Notes shall be executed on behalf of the Issuer with the official manual or facsimile signature of the Chairperson and attested by the official manual or facsimile signature of the Board Secretary, and shall be fully registered Notes without interest coupons. The issuance of the Series 2022A Notes shall be recorded in the office of the City Treasurer, and the certificate on the back of the Series 2022A Notes shall be executed with the official manual or facsimile signature of the City Treasurer. In case any officer whose signature or the facsimile of whose signature appears on the Series 2022A Notes shall cease to be such officer before the delivery of such Notes, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Series 2022A Notes shall not be valid or become obligatory for any purpose until the Certificate of Authentication thereon shall have been signed by the Registrar.

The Series 2022A Notes shall be in substantially the form attached as Exhibit A hereto.

Section 6. <u>Registration of Series 2022A Notes; Designation of Registrar; Transfer; Ownership; Delivery; and Cancellation</u>.

(a) <u>Registration</u>. The Series 2022A Notes shall be fully registered as to principal and interest in the names of the owners on the registration books of the Issuer kept by the Registrar, and after such registration, payment of the principal thereof and interest thereon shall be made only to the registered owners, their legal representatives or assigns. The Registrar shall maintain the books of the Issuer for the registration of ownership of the Series 2022A Notes for the payment of principal of and interest on the Series 2022A Notes. The Series 2022A Notes shall be negotiable, subject to the provisions for registration and transfer contained in the Series 2022A Notes and in this Series Resolution. The record and identity of the owners of the Series 2022A Notes may be kept confidential as provided by Section 22.7 of the Code of Iowa. The Issuer reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to the registered owners of the Series 2022A Notes.

(b) <u>Transfer</u>. The Series 2022A Notes shall be transferable only upon the registration books of the Issuer upon presentation to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form thereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner. In all cases of transfer of the Series 2022A Notes, the Registrar shall register, at the earliest practicable time, on the registration books, the Series 2022A Notes, in accordance with the provisions of this Series Resolution.

(c) <u>Ownership</u>. The person in whose name the ownership of the same shall be registered on the registration books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of the Series 2022A Notes and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Series 2022A Notes, including the interest thereon, to the extent of the sum or sums so paid.

(d) Cancellation. After the payment of the final installment of principal and interest, the Bank shall return the Series 2022A Note to the Paying Agent Upon final payment of the Series 2022A Notes, the Series 2022A Notes shall be cancelled by the Registrar and destroyed and a notation thereof made in the registration books of the Issuer.

(e) Non-Presentment of Notes. In the event any check in payment of interest on or principal of the Series 2022A Notes is returned to the Paying Agent or is not presented for payment, or if the Series 2022A Note is not presented for payment of principal at the maturity date thereof, if funds sufficient to pay such interest and principal shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for such interest or payment of the Series 2022A Notes shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the owner of the Series 2022A Notes who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on the owner's part under this Series Resolution or on, or with respect to, such interest or the Series 2022A Notes. The Paying Agent's obligation to hold such funds shall continue for a period equal to one year following the date on which such interest or principal became due, whether at maturity, or at the date fixed for prepayment thereof, or otherwise, at which time the Paying Agent, shall surrender any remaining funds so held to the Issuer, whereupon any claim under this Series Resolution by the owners of the Series 2022A Notes of whatever nature shall be made upon the Issuer.

Section 7. Reissuance of Mutilated, Destroyed, Stolen or Lost Note. In case the Series 2022A Notes shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of the Registrar authenticate and deliver a new Note of like tenor and amount in exchange and substitution for the mutilated Note, upon surrender of the mutilated Note to the Registrar, or in lieu of and substitution for the Note destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that the Note has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrar and Issuer with satisfactory indemnity and complying with such other reasonable regulations as the Issuer or its agent may prescribe and paying such expenses as the Issuer may incur in connection therewith.

Section 8. Reserved.

Section 9. Application of Loan Proceeds. The proceeds of the Loan (the "Loan Proceeds") shall be applied or deposited as set forth in this Series Resolution, the Loan Agreement and the closing certificate of the Board dated the date of delivery of the Series 2022A Notes. The proceeds of the Series 2022A Notes are authorized to be use to (1) fund a portion of the Project, (2) refund a portion of the Series 2017A Notes within ninety days of the date of delivery of the Series 2022A Notes, and (3) pay costs of issuance. The Board shall keep a detailed and segregated accounting of the expenditure of, and investment earnings on, the Loan

Proceeds to ensure compliance with the requirements of the Internal Revenue Code, as hereinafter defined.

Section 10. Continuing Disclosure. The Securities and Exchange Commission (the "SEC") has promulgated certain amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule") that make it unlawful for an underwriter to participate in the primary offering of municipal securities in a principal amount of $1,000,000 or more unless, before submitting a bid or entering into a purchase contract for the Notes, it has reasonably determined that the issuer or an obligated person has undertaken in writing for the benefit of the noteholders to provide certain disclosure information to prescribed information repositories on a continuing basis or unless and to the extent the offering is exempt from the requirements of the Rule because the issue is issuable in minimum denominations of $100,000 (subject to certain qualifications regarding deep discount securities) and (1) are sold in a limited private placement or (ii) have a maturity of nine months or less; or (iii) are subject to tender at par at the option of the holder at least every nine months.

The Series 2022A Notes are being issued as a single note in the denomination greater than $100,000 and are being sold in a limited private placement. Consequently, the Issuer hereby finds that the Rule is inapplicable to the Series 2022A Notes.

Section 11. Ratification of Master Resolution. All provisions of the Master Resolution are hereby ratified and confirmed, and are incorporated herein and certain provisions thereof are modified as applicable to the Series 2022A Notes as provided herein.

Section 12. Rates and Charges; Independent Consultant. There have heretofore been established as required by law, just and equitable fees, rates and charges for the use of the services rendered by the System. As provided in Section 6 of the Master Resolution, so long as the Series 2022A Notes are outstanding and unpaid, the fees, rates and charges to consumers of services of the System shall be sufficient in each Fiscal Year for the payment of the Operating Expenses of the System and Debt Service Payments.

Section 13. Equality of Lien on Net Revenues. As provided in the Master Resolution, the timely payment of principal of and interest on the outstanding Series 2022A Notes shall be secured equally and ratably with other Parity Obligations by the Net Revenues of the System without priority by reason of number or time of sale or delivery.

Section 14. Establishment of Funds; Series 2022A Sinking Fund. The provisions of Section 5 of the Master Resolution provide for the establishment of the Revenue Fund, any Parity Obligation Sinking Funds and any other required funds and accounts established in any Parity Obligation Issuance Documents, any required funds and accounts established in any Subordinate Obligation Issuance Documents, and for the application of the entire income and revenues of the System.

Series 2022A Sinking Fund. From and after the issuance of the Series 2022A Notes and as long as the Series 2022A Notes are outstanding, the Board shall establish and maintain a separate fund to be known as the Series 2022A Sinking Fund. The Board shall transfer amounts on deposit in the Revenue Fund into the Series 2022A Sinking Fund for the payment of interest and principal of the Series 2022A Notes, on the 1st day of each month commencing on the 1st day of the month immediately succeeding the date of issuance and delivery of any of the Series 2022A Notes in equal monthly amounts which, together with other monthly amounts made pursuant hereto, will be sufficient to pay principal of and interest on the Series 2022A Notes due on the next succeeding date which principal of and/or interest on such Series 2022A Notes are due and payable. If for any reason the amount on deposit in the Series 2022A Sinking Fund exceeds the required amount, the excess shall be forthwith withdrawn therefrom by the Board and deposited into the Revenue Fund. If for any reason the amount on deposit in the Series 2022A Sinking Fund is less than the required amount, the deficit shall forthwith be made up by the Board from available funds on deposit in the Revenue Fund as provided in Section 5 of the Master Resolution.

Money in the Series 2022A Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Series 2022A Notes as the same may become due and payable.

Section 15. Investment of Funds. Moneys in any fund or account may be invested only in Qualified Investments (as defined in the Master Resolution) which at the time are authorized by the laws of the State of Iowa for the investment of public funds. All such investments shall mature before the date on which the moneys are required for the purposes for which said fund was created or otherwise as herein provided. All funds of the Board shall be invested in accordance with applicable provisions of Iowa law.

All income derived from such investments shall be credited to the fund from which such investments were made. Such investments shall at any time necessary be liquidated and the proceeds thereof applied to the purpose for which the respective fund was created.

Section 16. Restrictions on the Incurrence of Parity Obligations and Subordinate Obligations. As provided in the Master Resolution, the Board shall comply with Section 9 of the Master Resolution regarding the incurrence of Parity Obligations and Subordinate Obligations.

Section 17. Covenants Regarding Operation of the System. Section 6 and Section 7 of the Master Resolution contains covenants relating to operation of the System. This Section contains covenants in addition to those set forth in Sections 6 and 7 of the Master Resolution:

The Board shall provide to the Bank a copy of its audited financial statements within 270 days of the end of the Utility's fiscal year. If the Board has not received its audited financial statements within the foregoing time period, the Board shall provide written notice to the Bank of the delay and provide the audited financial statements within 30 days of receipt thereof by the Board, which receipt shall include final approval or acceptance by the Board.

Section 18. Events of Default; Remedies. Except as herein expressly limited, the holder or holders of the Series 2022A Notes shall have and possess all the rights of action and remedies afforded by the Master Resolution, this Series Resolution, the common law, the Constitution and statutes of the State of Iowa, and of the United States of America, for the enforcement of payment of their obligation, and of the pledge of the Net Revenues made hereunder and under the Master Resolution, and of all covenants of the Issuer hereunder, including but not limited to the right to a proceeding in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by Iowa law and this Series Resolution or to obtain the appointment of a receiver to take possession of or operate the System and to perform the duties required by Iowa law and this Series Resolution, the Master Resolution or employ the services of an Independent Consultant to assist in the management of the System. The holders of a majority in aggregate principal amount of the Parity Obligations then outstanding under the Master Resolution shall have the right to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Section.

Section 19. Additional Covenants, Representations and Warranties of the Issuer; Disposition of Proceeds; Bank Qualification. The Issuer certifies and covenants that the Issuer through its officers, will (a) make such further specific covenants, representations and assurances as may be necessary or advisable; (b) file such forms, statements and supporting documents as may be required and in a timely manner; (c) if deemed necessary or advisable by its officers, employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance; and (d) it is the intention of the Issuer that interest on the Series 2022A Notes be and remain excluded from gross income for federal income tax purposes pursuant to the appropriate provisions of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations in effect with respect thereto (all of the foregoing herein referred to as the "Internal Revenue Code"). In furtherance thereof the Issuer covenants to comply with the provisions of the Internal Revenue Code as they may from time to time be in effect or amended and further covenants to comply with applicable future laws, regulations, published rulings and court decisions as may be necessary to insure that the interest on the Series 2022A Notes will remain excluded from gross income for federal income tax purposes. Any and all of the officers of the Issuer are hereby authorized and directed to take any and all actions as may be necessary to comply with the covenants herein contained.

The Series 2022A Notes are NOT designated as "qualified tax-exempt obligations" pursuant to Section 265(b) of the Internal Revenue Code.

Section 20. Discharge and Satisfaction of Series 2022A Notes. The covenants, liens and pledges entered into, created or imposed pursuant to this Series Resolution may be fully discharged and satisfied with respect to the Series 2022A Notes in any one or more of the following ways:

(a) By paying the Series 2022A Notes when the same shall become due and payable; or

(b) By depositing in trust with an escrow agent designated by the Board (the "Escrowed Amounts"), for the payment of the Series 2022A Notes and irrevocably appropriated exclusively to that purpose an amount in cash or United States Government Obligations (as defined in the Master Resolution) the maturities and income of which shall be sufficient to retire at maturity, or by prepayment prior to maturity on a designated date upon which the Series 2022A Notes may be prepaid, the Series 2022A Notes, together with the interest thereon to maturity or to the designated prepayment date, premiums thereon, if any, that may be payable on the prepayment date of the Series 2022A Notes to be prepaid shall have been previously published or provisions shall have been made for such publications.

Upon such payment or deposit of money or United States Government Obligations, or both, in the amount and manner provided by this section, all liability of the Issuer with respect to the Series 2022A Notes for which such deposits have been made shall cease, determine and be completely discharged, and the holders thereof shall be entitled only to payment out of the money or United States Government Obligations so deposited.

Section 21. Resolution a Contract. The provisions of this Series Resolution shall constitute a contract among the Issuer and the owners of the Series 2022A Notes, and after the issuance of the Series 2022A Notes, no change, variation or alteration of any kind in the provisions of this Series Resolution shall be made in any manner, except as provided in Section 22 or Section 23 hereof, until such time as the Series 2022A Notes, and interest due thereon, shall have been satisfied and discharged as provided in this Series Resolution.

Section 22. Modification of Resolution Not Requiring the Consent of Owners of Series 2022A Notes. For any one or more of the following purposes, without the consent of or notice to the owners of the Series 2022A Notes, and at any time or from time to time this Series Resolution may be amended, modified or supplemented by the Issuer:

(a) to cure any ambiguity or formal defect or omission in this Series Resolution;

(b) to grant to or confer for the benefit of the owners of the Series 2022A Notes any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the owners of the Series 2022A Notes; provided such additional rights, remedies, powers or authority do not adversely affect the rights of any Parity Obligation Holder;

(c) to assign and pledge under this Series Resolution additional revenues, properties or collateral;

(d) to provide for the refunding of the Series 2022A Notes if and to the extent permitted under the Master Resolution and any applicable Obligation Issuance Documents; or

(e) to make any other change that does not materially adversely affect the rights of any of the owners of the Series 2022A Notes.

Section 23. Modification of Series Resolution Requiring Consent of Owners of Series 2022A Notes. In addition to amendments to this Series Resolution authorized by Section 22 hereof, this Series Resolution may be amended from time to time if such amendment shall have been consented to by the Bank.

Whenever the Board shall propose to amend or modify this Series Resolution under the provisions of this Section, it shall cause notice of the proposed amendment to be mailed to the Bank. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory resolution is on file in the office of the Board Secretary.

Section 24. Conflicting Provisions. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 25. Effective Date. This Series Resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Section 26. Severability. If any section, paragraph, or provision of this Series Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions.

Adopted and approved this 12th day of September, 2022.

____________________________________
Chairperson, Board of Trustees of the
Indianola Municipal Utilities

Attest:

____________________________________
Board Secretary, Board of Trustees of the
Indianola Municipal Utilities

STATE OF IOWA
COUNTY OF WARREN SS:
CITY OF INDIANOLA

I, the undersigned, do hereby certify that I have in my possession or have access to the complete corporate records of the Board of Trustees (the "Board") of the Indianola Municipal Utilities, Indianola, Iowa, the governing body of the Municipal Communications Utility System (the "System") of the Utility, and of its Board and officers; and that I have carefully compared the transcript hereto attached with the aforesaid corporate records and that said transcript hereto attached is a true, correct and complete copy of all of the corporate records showing the action taken with respect to the matters set forth therein by the Board on the date shown therein, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that such meeting was duly and publicly held in accordance with the Notice of Meeting and tentative agenda and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Issuer pursuant to the rules of the Board and the provisions of Chapter 21, Code of Iowa, as amended, upon reasonable advance notice to the public and media at least twenty-four (24) hours prior to the commencement of the meeting as required by said law and with members of the public in attendance. I further certify that the individuals named in the attached proceedings were on the date thereof duly and lawfully possessed of their respective offices as indicated therein, that no Board vacancies existed except as may be stated in said proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization or existence of the City, the Board, the Utility, the System or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand hereto affixed this 12th day of September, 2022.

__________________________________
Board Secretary

**EXHIBIT A**

**(Form of Series 2022A Note)**

UNITED STATES OF AMERICA
STATE OF IOWA
INDIANOLA, IOWA

COMMUNICATIONS REVENUE AND REFUNDING NOTE, SERIES 2022A

No. R-1 $7,976,000

| INTEREST RATE | MATURITY DATE | NOTE DATE |
|---|---|---|
| 3.35% | June 1, 2034 | September 28, 2022 |

The City of Indianola, Iowa, acting by and through the Board of Trustees (the “Board”) of the Indianola Municipal Utilities (the “Issuer”), the governing body of the Municipal Communications Utility System (the “System”), for value received, hereby promises to pay in lawful money of the United States of America to:

TRUBANK, Indianola, Iowa

or registered assigns (the “Bank”), the principal sum of SEVEN MILLION NINE HUNDRED SEVENTY-SIX THOUSAND DOLLARS, together with interest on the outstanding principal hereof at the interest rate from the date of this Note, or from the most recent payment date on which interest has been paid until the Maturity Date, except as the provisions hereinafter set forth with respect to prepayment prior to maturity may be or become applicable hereto.

Interest on this Note is payable semi-annually on June 1 and December 1 of each year, commencing on June 1, 2023, at the Interest Rate, and will be calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal of this Note is payable in annual installments on June 1 of each year, commencing on June 1, 2023, in each of the respective years and in the respective installment amounts, and continuing to and including the Maturity Date, on which date all remaining principal and interest shall be due, as follows:

| Year | Principal Amount | Year | Principal Amount |
|---|---|---|---|
| 2023 | $581,000 | 2029 | $630,000 |
| 2024 | $534,000 | 2030 | $651,000 |
| 2025 | $552,000 | 2031 | $673,000 |
| 2026 | $571,000 | 2032 | $695,000 |
| 2027 | $590,000 | 2033 | $929,000 |
| 2028 | $609,000 | 2034* | $961,000 |

*Maturity Date

Both principal of and interest on this Note are payable to the registered owner appearing on the registration books of the Issuer maintained by the Board Secretary (hereinafter referred to as the "Registrar" or the "Paying Agent") at the close of business on the fifteenth day of the month immediately preceding the month in which the payment date occurs in lawful money of the United States of America by electronic means, check or draft mailed to the registered owner at the address shown on such registration books. *After the payment of the final installment of principal and interest, the Bank shall return this Note to the Paying Agent.*

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Registrar.

This Note and the series of which it is a part (the "Series 2022A Notes") are issued by the Issuer pursuant to and in strict compliance with the provisions of Chapter 384 of the Code of Iowa, and all other laws amendatory thereof and supplemental thereto (the "Act"), and in conformity with a Master Resolution of the Board of the Issuer (the "Master Resolution") and a series resolution (the "Series Resolution"), each adopted on September 12, 2022, and a Loan Agreement (the "Loan Agreement") between the Issuer and the Bank. The proceeds of the Series 2022A Notes will be used to finance a portion of the Project (as defined in the Series Resolution), to refund a portion of the Series 2017A Notes (as defined in the Series Resolution) within ninety days of the date of delivery of the Series 2022A Notes and to pay costs of issuance.

The Series 2022A Notes and any other Parity Obligations (as defined in the Master Resolution), are limited obligations of the Issuer payable solely from the future Net Revenues (as defined in the Master Resolution) of the System and, with respect to the Series 2022A Notes, the amounts on deposit in the funds and accounts held by the Issuer under the Series Resolution. The Series 2022A Notes and the interest thereon are not payable in any manner by taxation and do not constitute a general obligation of the Issuer. The Issuer shall not be liable by reason of the failure of the Net Revenues to be sufficient for the payment of the Series 2022A Notes.

Reference is hereby made to the Master Resolution, the Series Resolution and the Loan Agreement for a more complete statement as to the source of payment of the Series 2022A Notes, a description of the rights, duties and obligations of the Issuer, the Registrar, the Paying Agent and the Owners of the Series 2022A Notes, the terms upon which the Series 2022A Notes are issued and the terms and conditions upon which the Series 2022A Notes will be paid at or prior to maturity, or will be deemed to be paid upon the making of provision for payment. Any capitalized term used in this Note but not defined in this Note is used with the meaning set forth in the Master Resolution, the Series Resolution and the Loan Agreement.

The Issuer may not prepay the principal of the Notes prior to June 1, 2028. The Issuer reserves the right to prepay principal of the Notes *in whole or in part* on June 1, 2028, or on any date thereafter upon terms of par plus accrued interest upon not less than thirty (30) days prior written notice to the Bank. Any prepaid principal shall cease to bear interest on each prepayment date.

This Note is fully negotiable but shall be fully registered as to both principal and interest in the name of the owner on the books of the Issuer in the office of the Registrar, as Note registrar, after which no transfer shall be valid unless made on said books and then only upon presentation of this Note to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or a duly authorized attorney or the assignment form hereon completed and duly executed by the registered owner or his duly authorized attorney.

The Issuer, the Registrar and any Paying Agent may deem and treat the registered owner hereof as the absolute owner for the purposes of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes, and the Issuer, the Registrar and any Paying Agent shall not be affected by any notice to the contrary.

And it is hereby certified and recited that all acts, conditions and things required by the laws and Constitution of the State of Iowa, to exist, to be done or to be performed precedent to the lawful issue of this Note do exist and have been done and performed in regular and due form, time and manner.

IN TESTIMONY WHEREOF, the City of Indianola, Iowa, by and through the Indianola Municipal Utilities, has caused this Note to be executed with the duly authorized facsimile signature of its Chairperson and attested with the duly authorized facsimile signature of its Board Secretary, all as of the Note Date.

CITY OF INDIANOLA, IOWA, by and through the Board of Trustees of the Indianola Municipal Utilities

By___________________________________
Chairperson, Board of Trustees of the Indianola Municipal Utilities

Attest:

____________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

CERTIFICATE OF AUTHENTICATION

This Note is one of the Series 2022A Notes described in the within-mentioned Series Resolution.

Date of authentication: Note Date

INDIANOLA MUNICIPAL UTILITIES, Indianola, Iowa, Registrar and Paying Agent

By___________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

STATE OF IOWA
COUNTY OF WARREN SS: CITY TREASURER'S CERTIFICATE
CITY OF INDIANOLA

The original issuance of the Series 2022A Notes, of which this Note is a part, was duly and properly recorded in my office as of the Note Date.

By___________________________________
City Treasurer, Indianola, Iowa

(Legend as to Abbreviations)

The following abbreviations, when used in this Note, shall be construed as though they were written out in full according to

| | | | |
|---|---|---|---|
| TEN COM | - | as tenants in common | UNIF TRANSFER MIN ACT |
| TEN ENT | - | as tenants by the entireties | __________ Custodian __________ |
| JT TEN | - | as joint tenants with right of survivorship and not as tenants in common | (cust) (minor) |
| | | | under Uniform Gifts to Minors Act |
| | | | ______________________________ (State) |

Additional abbreviations may also be used though not in the list above.

(Form of Assignment)

(An Assignment, in the form hereinafter set out, should be printed on each Note:)

ASSIGNMENT

For valuable consideration, receipt of which is hereby acknowledged, the undersigned, sells, transfers and assigns this Note to ______________________________________________

______________________________________________________________________

______________________________________________________________________

(Please print or type name and address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

__________________________________________

and does hereby irrevocably appoint ______________________________________________ Attorney, to transfer this Note on the books kept for registration thereof with full power of substitution.

Dated:____________________________________

Signature guaranteed:________________________

__________________________________________

__________________________________________

NOTE: The signature(s) to this Power must correspond with the name(s) as written upon the face of the Certificate(s) or Note(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee must be provided in accordance with the prevailing standards and procedures of the Paying Agent/Registrar. Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program acceptable to the Trustee.

INDIANOLA MUNICIPAL UTILITIES

Electric • Communications • Water

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of taxable Communications Revenue Refunding Notes, Series 2022B and other documents related to the notes.

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**Recommendation:** Roll call is in order.

**Attachments:**

1. Proc Series Issuance 2022B (Taxable) (Indianola MU #2 2022)-v3
2. Loan Agreement Series 2022B (Indianola MU 2022)-v3
3. Final Opinion Series 2022B (Indianola MU #2 2022)-v3
4. Wire Transfer Agreement Series 2022B (Indianola MU 2022)-v3

SERIES RESOLUTION TO APPROVE SERIES 2022B NOTES

517813-2

Indianola, Iowa

September 12, 2022

The Board of Trustees of the Indianola Municipal Utilities, Indianola, Iowa, met on September 12, 2022, at 5:30 o'clock p.m., at the Council Chambers, City Hall, Indianola, Iowa.

The meeting was called to order by the Chairperson, and the roll was called showing the following Board Members present and absent:

Present: ______________________________________________________________

Absent: ________________________________________.

***Other Business ***

Board Member ______________________ introduced the resolution next hereinafter set out and moved its adoption, seconded by Board Member ______________________; and after due consideration thereof by the Board, the Chairperson put the question upon the adoption of the resolution, and the roll being called, the following named Board Members voted:

Ayes: ____________________________________________________

Nays: _________________________________________.

Whereupon, the Chairperson declared said resolution duly adopted, as follows:

***Other Business ***

On motion and vote the meeting adjourned.

RESOLUTION NO. ___

Series Resolution authorizing and approving a Loan Agreement and providing for the issuance of Taxable Communications Revenue Refunding Notes, Series 2022B and other documents related to the Notes.

WHEREAS, the City of Indianola (the "City"), in Warren County, State of Iowa, did heretofore establish the Indianola Municipal Utilities (the "Utility") in and for the City; and

WHEREAS, the management and control of the Utility are vested in the Board of Trustees (the "Board") of the Utility; and

WHEREAS, the City, acting by and through the Board (referred to herein as the "Issuer"), is authorized and empowered by Chapter 384 of the Code of Iowa (the "Act") to borrow money for the Municipal Communications Utility System (the "System") of the Utility and the Board has adopted a master resolution (the "Master Resolution") authorizing the issuance from time to time of Parity Obligations (as defined in the Master Resolution) to borrow money secured by a first lien on the System's Net Revenues (as defined in the Master Resolution); and

WHEREAS, pursuant to a resolution (the "Series 2017A Note Resolution") adopted and approved by the Board on July 24, 2017, the City, acting by and through the Board, authorized the issuance of $6,287,000 Communications Utility Revenue Capital Loan Notes, Series 2017A, dated August 10, 2017 (the "Series 2017A Notes") to finance improvements to the System, a portion of which remain outstanding, and the outstanding Series 2017A Notes are optional for redemption on any date subject to the provisions of the Series 2017A Note Resolution; and

WHEREAS, pursuant to a resolution (the "Series 2017B Note Resolution") adopted and approved by the Board on July 24, 2017, the Issuer authorized the issuance of $3,000,000 Taxable Communications Utility Revenue Capital Loan Notes, Series 2017B, dated August 10, 2017 (the "Series 2017B Notes" and, together with the Series 2017A Notes, the "Prior Notes") to finance improvements to the System, a portion of which remain outstanding, and the Series 2017B Notes are optional for redemption on any date subject to the provisions of the Series 2017B Note Resolution; and

WHEREAS, the Board has developed a financing plan which includes financing the costs of a Project (as defined herein) and refunding the outstanding Prior Notes, and, pursuant to the provisions of Section 384.24A of the Code of Iowa, a public hearing notice duly published and a hearing held thereon on August 8, 2022, the Issuer has heretofore determined to enter into one or more loan agreements in the aggregate principal amount not to exceed $12,200,000 and to issue one or more series of communications revenue notes secured by the System's Net Revenues; and

WHEREAS, in order to provide funds to finance the Project, refund a portion of the Series 2017B Notes and pay costs of issuance, the Issuer deems it necessary and advisable to enter into the hereinafter defined Loan Agreement and to borrow money in the amount of $2,805,000 and to evidence the Issuer's obligation to repay the amount borrowed through the issuance of a like principal amount of Taxable Communications Revenue Refunding Notes, Series 2022B (the "Series 2022B Notes"); and

WHEREAS, arrangements have been made for the sale of the Series 2022B Notes to Truist, a North Carolina Banking Corporation (the "Bank") pursuant to the Bank's bid proposal; and

WHEREAS, Section 2 of the Master Resolution authorizes the Board to adopt a Series Resolution (as defined in the Master Resolution) to provide for the issuance of Parity Obligations and this Series Resolution constitutes a Series Resolution under the Master Resolution; and

WHEREAS, the obligations of the Issuer under the Series 2022B Notes and the Loan Agreement shall be payable solely and only from the Net Revenues of the System and certain funds and accounts created and pledged under the this Series Resolution and the Master Resolution; and

WHEREAS, the following action is now considered to be in the best interests of the Issuer;

NOW, THEREFORE, Be It Resolved by the Board of the Indianola Municipal Utilities, as follows:

Section 1. Definitions. Terms used herein and not defined herein shall have the meaning given to them in this Series Resolution and the Master Resolution unless the text expressly or by necessary implication requires otherwise:

"Business Day" means any day other than a Saturday, Sunday, legal holiday or a day on which financial institutions are closed in Iowa.

"Closing Date" shall mean the date of delivery of the Series 2022B Notes, anticipated to be September 28, 2022, with any final changes to such date set forth in the Loan Agreement.

"Loan" shall mean the loan made pursuant to the Loan Agreement and evidenced by the Series 2022B Notes.

"Loan Agreement" means the loan agreement between the Issuer and the Bank related to the Series 2022B Notes.

"Notes" or "Series 2022B Notes" means the $2,805,000 Taxable Communications Revenue Refunding Notes, Series 2022B.

"Paying Agent" shall mean the Board Secretary or such successor and assigns, as approved by the Utility.

"Series 2017B Notes" have the meaning in the preamble hereto.

"Series 2022B Sinking Fund" means the fund by that name created pursuant to Section 14 hereof.

"Series Resolution" or "Resolution" means this resolution.

Section 2. Loan Authorization; Authorization for Execution and Delivery of Documents. Following the adoption of this Series Resolution and pursuant to Chapter 384 of the Code of Iowa, the Board is hereby authorized to execute and deliver the Loan Agreement with the Bank in the form which has been placed on file with the Board providing for a Loan in the aggregate amount of $2,805,000 for the purpose or purposes set forth in the preamble hereof. The Chairperson and Board Secretary are hereby authorized to execute and deliver the Loan Agreement on behalf of the Issuer in the form presented to the Board, with final terms as determined by the Board and the General Manager and Finance/HR Director of the Utility.

The Chairperson, Board Secretary and City Treasurer are each authorized to execute and deliver the Series 2022B Notes, any and all agreements, documents and instruments required related to the issuance of the Series 2022B Notes and to carry out the purposes set forth in this Series Resolution, including but not limited to any tax certificates, closing certificates and purchase agreements.

Section 3. Registrar/Paying Agent. The Board Secretary is hereby designated as the Registrar and Paying Agent for the Series 2022B Notes and may be hereinafter referred to as the "Registrar" or the "Paying Agent" in such capacities.

Section 4. Source of Payment of the Series 2022B Notes. The Series 2022B Notes, when issued, will be Parity Obligations under the Master Resolution and shall be payable solely from the Net Revenues of the System, and certain funds and accounts created and pledged under this Series Resolution and the Master Resolution.

Section 5. Series 2022B Notes Details; Form of Series 2022B Notes. Principal of the Series 2022B Notes shall bear interest at the rate of 4.200% per annum. Interest on the Series 2022B Notes is payable semi-annually on June 1 and December 1 of each year, commencing June 1, 2023, and will be calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal of the Series 2022B Notes is payable in annual installments on June 1 of each year, commencing on June 1, 2023, in the respective installment amounts through and including the maturity date, as set forth in the Series 2022B Notes. All payments shall be applied first to the payment of interest due and next to the reduction of principal. The Chairperson, Board Secretary, General Manager and Finance/HR Director of the Utility are each authorized individually and collectively to finalize the terms of the Series 2022B Notes, including the final amortization schedule, in coordination with its Bond Counsel (as defined in the Master Resolution) and the Bank.

Payment of both principal of and interest on the Series 2022B Notes shall be made to the registered owners appearing on the registration books of the Issuer at the close of business on the fifteenth day of the month next preceding the payment date and shall be paid by wire transfer pursuant to wire instructions provided by the Bank or in such other manner communicated in writing by the Bank to the Issuer. *After the payment of the final installment of principal and interest on a Series 2022B Note, the Bank shall return the Series 2022B Note to the Paying Agent.*

The Issuer may not prepay the principal of the Series 2022B Notes prior to June 1, 2028. The Issuer reserves the right to prepay principal of the Series 2022B Notes in *whole, but not in part* on June 1, 2028, or on any payment date thereafter upon terms of par plus accrued interest upon not less than thirty (30) days prior written notice to the Bank. Any prepaid principal shall cease to bear interest on each prepayment date.

The Series 2022B Notes shall be executed on behalf of the Issuer with the official manual or facsimile signature of the Chairperson and attested by the official manual or facsimile signature of the Board Secretary, and shall be fully registered Notes without interest coupons. The issuance of the Series 2022B Notes shall be recorded in the office of the City Treasurer, and the certificate on the back of the Series 2022B Notes shall be executed with the official manual or facsimile signature of the City Treasurer. In case any officer whose signature or the facsimile of whose signature appears on the Series 2022B Notes shall cease to be such officer before the delivery of such Notes, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Series 2022B Notes shall not be valid or become obligatory for any purpose until the Certificate of Authentication thereon shall have been signed by the Registrar.

The Series 2022B Notes shall be in substantially the form attached as Exhibit A hereto.

Section 6. Registration of Series 2022B Notes; Designation of Registrar; Transfer; Ownership; Delivery; and Cancellation.

(a) Registration. The Series 2022B Notes shall be fully registered as to principal and interest in the names of the owners on the registration books of the Issuer kept by the Registrar, and after such registration, payment of the principal thereof and interest thereon shall be made only to the registered owners, their legal representatives or assigns. The Registrar shall maintain the books of the Issuer for the registration of ownership of the Series 2022B Notes for the payment of principal of and interest on the Series 2022B Notes. The Series 2022B Notes shall be negotiable, subject to the provisions for registration and transfer contained in the Series 2022B Notes and in this Series Resolution. The record and identity of the owners of the Series 2022B Notes may be kept confidential as provided by Section 22.7 of the Code of Iowa. The Issuer reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to the registered owners of the Series 2022B Notes.

(b) Transfer. The Series 2022B Notes shall be transferable only upon the registration books of the Issuer upon presentation to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form thereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner. In all cases of transfer of the Series 2022B Notes, the Registrar shall register, at the earliest practicable time, on the registration books, the Series 2022B Notes, in accordance with the provisions of this Series Resolution.

(c) Ownership. The person in whose name the ownership of the same shall be registered on the registration books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of the Series 2022B Notes and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Series 2022B Notes, including the interest thereon, to the extent of the sum or sums so paid.

(d) Cancellation. After the payment of the final installment of principal and interest, the Bank shall return the Series 2022B Note to the Paying Agent Upon final payment of the Series 2022B Notes, the Series 2022B Notes shall be cancelled by the Registrar and destroyed and a notation thereof made in the registration books of the Issuer.

(e) Non-Presentment of Notes. In the event any check in payment of interest on or principal of the Series 2022B Notes is returned to the Paying Agent or is not presented for payment, or if the Series 2022B Note is not presented for payment of principal at the maturity date thereof, if funds sufficient to pay such interest and principal shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for such interest or payment of the Series 2022B Notes shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the owner of the Series 2022B Notes who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on the owner's part under this Series Resolution or on, or with respect to, such interest or the Series 2022B Notes. The Paying Agent's obligation to hold such funds shall continue for a period equal to one year following the date on which such interest or principal became due, whether at maturity, or at the date fixed for prepayment thereof, or otherwise, at which time the Paying Agent, shall surrender any remaining funds so held to the Issuer, whereupon any claim under this Series Resolution by the owners of the Series 2022B Notes of whatever nature shall be made upon the Issuer.

Section 7. Reissuance of Mutilated, Destroyed, Stolen or Lost Note. In case the Series 2022B Notes shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of the Registrar authenticate and deliver a new Note of like tenor and amount in exchange and substitution for the mutilated Note, upon surrender of the mutilated Note to the Registrar, or in lieu of and substitution for the Note destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that the Note has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrar and Issuer with satisfactory indemnity and complying with such other reasonable regulations as the Issuer or its agent may prescribe and paying such expenses as the Issuer may incur in connection therewith.

Section 8. Reserved.

Section 9. Application of Loan Proceeds. The proceeds of the Loan (the "Loan Proceeds") shall be applied or deposited as set forth in this Series Resolution, the Loan Agreement and the closing certificate of the Board dated the date of delivery of the Series 2022B Notes. The proceeds of the Series 2022B Notes are authorized to be use to (1) fund a portion of the Project, (2) refund a portion of the Series 2017B Notes within ninety days of the date of delivery of the Series 2022B Notes, and (3) pay costs of issuance. The Board shall keep a detailed and segregated accounting of the expenditure of, and investment earnings on, the Loan Proceeds to ensure compliance with the requirements of the Internal Revenue Code, as hereinafter defined.

Section 10. Continuing Disclosure. The Securities and Exchange Commission (the "SEC") has promulgated certain amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule") that make it unlawful for an underwriter to participate in the primary offering of municipal securities in a principal amount of $1,000,000 or more unless, before submitting a bid or entering into a purchase contract for the Notes, it has reasonably determined that the issuer or an obligated person has undertaken in writing for the benefit of the noteholders to provide certain disclosure information to prescribed information repositories on a continuing basis or unless and to the extent the offering is exempt from the requirements of the Rule because the issue is issuable in minimum denominations of $100,000 (subject to certain qualifications regarding deep discount securities) and (1) are sold in a limited private placement or (ii) have a maturity of nine months or less; or (iii) are subject to tender at par at the option of the holder at least every nine months.

The Series 2022B Notes are being issued as a single note in the denomination greater than $100,000 and are being sold in a limited private placement. Consequently, the Issuer hereby finds that the Rule is inapplicable to the Series 2022B Notes.

Section 11. Ratification of Master Resolution. All provisions of the Master Resolution are hereby ratified and confirmed, and are incorporated herein and certain provisions thereof are modified as applicable to the Series 2022B Notes as provided herein.

Section 12. Rates and Charges; Independent Consultant. There have heretofore been established as required by law, just and equitable fees, rates and charges for the use of the services rendered by the System. As provided in Section 6 of the Master Resolution, so long as the Series 2022B Notes are outstanding and unpaid, the fees, rates and charges to consumers of services of the System shall be sufficient in each Fiscal Year for the payment of the Operating Expenses of the System and Debt Service Payments.

Section 13. Equality of Lien on Net Revenues. As provided in the Master Resolution, the timely payment of principal of and interest on the outstanding Series 2022B Notes shall be secured equally and ratably with other Parity Obligations by the Net Revenues of the System without priority by reason of number or time of sale or delivery.

Section 14. Establishment of Funds; Series 2022B Sinking Fund. The provisions of Section 5 of the Master Resolution provide for the establishment of the Revenue Fund, any Parity Obligation Sinking Funds and any other required funds and accounts established in any Parity Obligation Issuance Documents, any required funds and accounts established in any Subordinate Obligation Issuance Documents, and for the application of the entire income and revenues of the System.

Series 2022B Sinking Fund. From and after the issuance of the Series 2022B Notes and as long as the Series 2022B Notes are outstanding, the Board shall establish and maintain a separate fund to be known as the Series 2022B Sinking Fund. The Board shall transfer amounts on deposit in the Revenue Fund into the Series 2022B Sinking Fund for the payment of interest and principal of the Series 2022B Notes, on the 1st day of each month commencing on the 1st day of the month immediately succeeding the date of issuance and delivery of any of the Series 2022B Notes in equal monthly amounts which, together with other monthly amounts made pursuant hereto, will be sufficient to pay principal of and interest on the Series 2022B Notes due on the next succeeding date which principal of and/or interest on such Series 2022B Notes are due and payable. If for any reason the amount on deposit in the Series 2022B Sinking Fund exceeds the required amount, the excess shall be forthwith withdrawn therefrom by the Board and deposited into the Revenue Fund. If for any reason the amount on deposit in the Series 2022B Sinking Fund is less than the required amount, the deficit shall forthwith be made up by the Board from available funds on deposit in the Revenue Fund as provided in Section 5 of the Master Resolution.

Money in the Series 2022B Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Series 2022B Notes as the same may become due and payable.

Section 15. Investment of Funds. Moneys in any fund or account may be invested only in Qualified Investments (as defined in the Master Resolution) which at the time are authorized by the laws of the State of Iowa for the investment of public funds. All such investments shall mature before the date on which the moneys are required for the purposes for which said fund was created or otherwise as herein provided. All funds of the Board shall be invested in accordance with applicable provisions of Iowa law.

All income derived from such investments shall be credited to the fund from which such investments were made. Such investments shall at any time necessary be liquidated and the proceeds thereof applied to the purpose for which the respective fund was created.

Section 16. Restrictions on the Incurrence of Parity Obligations and Subordinate Obligations. As provided in the Master Resolution, the Board shall comply with Section 9 of the Master Resolution regarding the incurrence of Parity Obligations and Subordinate Obligations.

Section 17. Covenants Regarding Operation of the System. Section 6 and Section 7 of the Master Resolution contains covenants relating to operation of the System. This Section contains covenants in addition to those set forth in Sections 6 and 7 of the Master Resolution:

The Board shall provide to the Bank a copy of its the audited financial statements within 270 days of the end of the Utility's fiscal year. If the Board has not received its audited financial statements within the foregoing time period, the Board shall provide written notice to the Bank of the delay and provide the audited financial statements within 30 days of receipt thereof by the Board, which receipt shall include final approval or acceptance by the Board.

Section 18. Events of Default; Remedies. Except as herein expressly limited, the holder or holders of the Series 2022B Notes shall have and possess all the rights of action and remedies afforded by the Master Resolution, this Series Resolution, the common law, the Constitution and statutes of the State of Iowa, and of the United States of America, for the enforcement of payment of their obligation, and of the pledge of the Net Revenues made hereunder and under the Master Resolution, and of all covenants of the Issuer hereunder, including but not limited to the right to a proceeding in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by Iowa law and this Series Resolution or to obtain the appointment of a receiver to take possession of or operate the System and to perform the duties required by Iowa law and this Series Resolution, the Master Resolution or employ the services of an Independent Consultant to assist in the management of the System. The holders of a majority in aggregate principal amount of the Parity Obligations then outstanding under the Master Resolution shall have the right to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Section.

Section 19. Additional Covenants, Representations and Warranties of the Issuer; Disposition of Proceeds; Bank Qualification. The Issuer certifies and covenants that the Issuer through its officers, will (a) make such further specific covenants, representations and assurances as may be necessary or advisable; (b) file such forms, statements and supporting documents as may be required and in a timely manner; and (c) if deemed necessary or advisable by its officers, employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance. Any and all of the officers of the Issuer are hereby authorized and directed to take any and all actions as may be necessary to comply with the covenants herein contained.

The Series 2022B Notes are NOT designated as "qualified tax-exempt obligations" pursuant to Section 265(b) of the Internal Revenue Code, and the interest on the Series 2022B Notes is NOT excluded from gross income for federal income tax purposes.

Section 20. Discharge and Satisfaction of Series 2022B Notes. The covenants, liens and pledges entered into, created or imposed pursuant to this Series Resolution may be fully discharged and satisfied with respect to the Series 2022B Notes in any one or more of the following ways:

(a) By paying the Series 2022B Notes when the same shall become due and payable; or

(b) By depositing in trust with an escrow agent designated by the Board (the "Escrowed Amounts"), for the payment of the Series 2022B Notes and irrevocably appropriated exclusively to that purpose an amount in cash or United States Government Obligations (as defined in the Master Resolution) the maturities and income of which shall be sufficient to retire at maturity, or by prepayment prior to maturity on a designated date upon which the Series 2022B Notes may be prepaid, the Series 2022B Notes, together with the interest thereon to maturity or to the designated prepayment date, premiums thereon, if any, that may be payable on the prepayment date of the Series 2022B Notes to be prepaid shall have been previously published or provisions shall have been made for such publications.

Upon such payment or deposit of money or United States Government Obligations, or both, in the amount and manner provided by this section, all liability of the Issuer with respect to the Series 2022B Notes for which such deposits have been made shall cease, determine and be completely discharged, and the holders thereof shall be entitled only to payment out of the money or United States Government Obligations so deposited.

Section 21. Resolution a Contract. The provisions of this Series Resolution shall constitute a contract among the Issuer and the owners of the Series 2022B Notes, and after the issuance of the Series 2022B Notes, no change, variation or alteration of any kind in the provisions of this Series Resolution shall be made in any manner, except as provided in Section 22 or Section 23 hereof, until such time as the Series 2022B Notes, and interest due thereon, shall have been satisfied and discharged as provided in this Series Resolution.

Section 22. Modification of Resolution Not Requiring the Consent of Owners of Series 2022B Notes. For any one or more of the following purposes, without the consent of or notice to the owners of the Series 2022B Notes, and at any time or from time to time this Series Resolution may be amended, modified or supplemented by the Issuer:

(a) to cure any ambiguity or formal defect or omission in this Series Resolution;

(b) to grant to or confer for the benefit of the owners of the Series 2022B Notes any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the owners of the Series 2022B Notes; provided such additional rights, remedies, powers or authority do not adversely affect the rights of any Parity Obligation Holder;

(c) to assign and pledge under this Series Resolution additional revenues, properties or collateral;

(d) to provide for the refunding of the Series 2022B Notes if and to the extent permitted under the Master Resolution and any applicable Obligation Issuance Documents; or

(e) to make any other change that does not materially adversely affect the rights of any of the owners of the Series 2022B Notes.

Section 23. Modification of Series Resolution Requiring Consent of Owners of Series 2022B Notes. In addition to amendments to this Series Resolution authorized by Section 22 hereof, this Series Resolution may be amended from time to time if such amendment shall have been consented to by the Bank.

Whenever the Board shall propose to amend or modify this Series Resolution under the provisions of this Section, it shall cause notice of the proposed amendment to be mailed to the Bank. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory resolution is on file in the office of the Board Secretary.

Section 24. Conflicting Provisions. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 25. Effective Date. This Series Resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Section 26. Severability. If any section, paragraph, or provision of this Series Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions.

Adopted and approved this 12th day of September, 2022.

____________________________________
Chairperson, Board of Trustees of the
Indianola Municipal Utilities

Attest:

____________________________________
Board Secretary, Board of Trustees of the
Indianola Municipal Utilities

STATE OF IOWA
COUNTY OF WARREN SS:
CITY OF INDIANOLA

I, the undersigned, do hereby certify that I have in my possession or have access to the complete corporate records of the Board of Trustees (the "Board") of the Indianola Municipal Utilities, Indianola, Iowa, the governing body of the Municipal Communications Utility System (the "System") of the Utility, and of its Board and officers; and that I have carefully compared the transcript hereto attached with the aforesaid corporate records and that said transcript hereto attached is a true, correct and complete copy of all of the corporate records showing the action taken with respect to the matters set forth therein by the Board on the date shown therein, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that such meeting was duly and publicly held in accordance with the Notice of Meeting and tentative agenda and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Issuer pursuant to the rules of the Board and the provisions of Chapter 21, Code of Iowa, as amended, upon reasonable advance notice to the public and media at least twenty-four (24) hours prior to the commencement of the meeting as required by said law and with members of the public in attendance. I further certify that the individuals named in the attached proceedings were on the date thereof duly and lawfully possessed of their respective offices as indicated therein, that no Board vacancies existed except as may be stated in said proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization or existence of the City, the Board, the Utility, the System or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand hereto affixed this 12th day of September, 2022.

Board Secretary

**EXHIBIT A**

**(Form of Series 2022B Note)**

UNITED STATES OF AMERICA
STATE OF IOWA
INDIANOLA, IOWA

TAXABLE COMMUNICATIONS REVENUE REFUNDING NOTE, SERIES 2022B

No. R-1 $2,805,000

| INTEREST RATE | MATURITY DATE | NOTE DATE |
|---|---|---|
| 4.200% | June 1, 2032 | September 28, 2022 |

The City of Indianola, Iowa, acting by and through the Board of Trustees (the "Board") of the Indianola Municipal Utilities (the "Issuer"), the governing body of the Municipal Communications Utility System (the "System"), for value received, hereby promises to pay in lawful money of the United States of America to:

TRUIST BANK, a North Carolina Banking Corporation

or registered assigns (the "Bank"), the principal sum of TWO MILLION EIGHT HUNDRED FIVE THOUSAND DOLLARS, together with interest on the outstanding principal hereof at the interest rate from the date of this Note, or from the most recent payment date on which interest has been paid until the Maturity Date, except as the provisions hereinafter set forth with respect to prepayment prior to maturity may be or become applicable hereto.

Interest on this Note is payable semi-annually on June 1 and December 1 of each year, commencing on June 1, 2023, at the Interest Rate, and will be calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal of this Note is payable in annual installments on June 1 of each year, commencing on June 1, 2023, in each of the respective years and in the respective installment amounts, and continuing to and including the Maturity Date, on which date all remaining principal and interest shall be due, as follows:

| Year | Principal Amount | Year | Principal Amount |
|---|---|---|---|
| 2023 | $265,000 | 2028 | $281,000 |
| 2024 | $238,000 | 2029 | $292,000 |
| 2025 | $248,000 | 2030 | $305,000 |
| 2026 | $258,000 | 2031 | $318,000 |
| 2027 | $269,000 | 2032* | $331,000 |

*Maturity Date

Both principal of and interest on this Note are payable to the registered owner appearing on the registration books of the Issuer maintained by the Board Secretary (hereinafter referred to as the "Registrar" or the "Paying Agent") at the close of business on the fifteenth day of the month immediately preceding the month in which the payment date occurs in lawful money of the United States of America by electronic means, check or draft mailed to the registered owner at the address shown on such registration books. *After the payment of the final installment of principal and interest, the Bank shall return this Note to the Paying Agent.*

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Registrar.

This Note and the series of which it is a part (the "Series 2022B Notes") are issued by the Issuer pursuant to and in strict compliance with the provisions of Chapter 384 of the Code of Iowa, and all other laws amendatory thereof and supplemental thereto (the "Act"), and in conformity with a Master Resolution of the Board of the Issuer (the "Master Resolution") and a series resolution (the "Series Resolution"), each adopted on September 12, 2022, and a Loan Agreement (the "Loan Agreement") between the Issuer and the Bank. The proceeds of the Series 2022B Notes will be used to finance a portion of the Project (as defined in the Series Resolution), to refund a portion of the Series 2017B Notes (as defined in the Series Resolution) within ninety days of the date of delivery of the Series 2022B Notes and to pay costs of issuance.

The Series 2022B Notes and any other Parity Obligations (as defined in the Master Resolution), are limited obligations of the Issuer payable solely from the future Net Revenues (as defined in the Master Resolution) of the System and, with respect to the Series 2022B Notes, the amounts on deposit in the funds and accounts held by the Issuer under the Series Resolution. The Series 2022B Notes and the interest thereon are not payable in any manner by taxation and do not constitute a general obligation of the Issuer. The Issuer shall not be liable by reason of the failure of the Net Revenues to be sufficient for the payment of the Series 2022B Notes.

Reference is hereby made to the Master Resolution, the Series Resolution and the Loan Agreement for a more complete statement as to the source of payment of the Series 2022B Notes, a description of the rights, duties and obligations of the Issuer, the Registrar, the Paying Agent and the Owners of the Series 2022B Notes, the terms upon which the Series 2022B Notes are issued and the terms and conditions upon which the Series 2022B Notes will be paid at or prior to maturity, or will be deemed to be paid upon the making of provision for payment. Any capitalized term used in this Note but not defined in this Note is used with the meaning set forth in the Master Resolution, the Series Resolution and the Loan Agreement.

The Issuer may not prepay the principal of the Notes prior to June 1, 2028. The Issuer reserves the right to prepay principal of the Notes *in whole, but not in part* on June 1, 2028, or on any payment date thereafter upon terms of par plus accrued interest upon not less than thirty (30) days prior written notice to the Bank. Any prepaid principal shall cease to bear interest on each prepayment date.

This Note is fully negotiable but shall be fully registered as to both principal and interest in the name of the owner on the books of the Issuer in the office of the Registrar, as Note registrar, after which no transfer shall be valid unless made on said books and then only upon presentation of this Note to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or a duly authorized attorney or the assignment form hereon completed and duly executed by the registered owner or his duly authorized attorney.

The Issuer, the Registrar and any Paying Agent may deem and treat the registered owner hereof as the absolute owner for the purposes of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes, and the Issuer, the Registrar and any Paying Agent shall not be affected by any notice to the contrary.

And it is hereby certified and recited that all acts, conditions and things required by the laws and Constitution of the State of Iowa, to exist, to be done or to be performed precedent to the lawful issue of this Note do exist and have been done and performed in regular and due form, time and manner.

IN TESTIMONY WHEREOF, the City of Indianola, Iowa, by and through the Indianola Municipal Utilities, has caused this Note to be executed with the duly authorized facsimile signature of its Chairperson and attested with the duly authorized facsimile signature of its Board Secretary, all as of the Note Date.

CITY OF INDIANOLA, IOWA, by and through the Board of Trustees of the Indianola Municipal Utilities

By___________________________________
Chairperson, Board of Trustees of the Indianola Municipal Utilities

Attest:

___________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

CERTIFICATE OF AUTHENTICATION

This Note is one of the Series 2022B Notes described in the within-mentioned Series Resolution.

Date of authentication: Note Date

INDIANOLA MUNICIPAL UTILITIES, Indianola, Iowa, Registrar and Paying Agent

By___________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

STATE OF IOWA
COUNTY OF WARREN SS: CITY TREASURER'S CERTIFICATE
CITY OF INDIANOLA

The original issuance of the Series 2022B Notes, of which this Note is a part, was duly and properly recorded in my office as of the Note Date.

By___________________________________
City Treasurer, Indianola, Iowa

(Legend as to Abbreviations)

The following abbreviations, when used in this Note, shall be construed as though they were written out in full according to

| | | | |
|---|---|---|---|
| TEN COM | - | as tenants in common | UNIF TRANSFER MIN ACT |
| TEN ENT | - | as tenants by the entireties | __________ Custodian __________ |
| JT TEN | - | as joint tenants with right of survivorship and not as tenants in common | (cust) (minor) |
| | | | under Uniform Gifts to Minors Act |
| | | | ______________________________ (State) |

Additional abbreviations may also be used though not in the list above.

(Form of Assignment)

(An Assignment, in the form hereinafter set out, should be printed on each Note:)

ASSIGNMENT

For valuable consideration, receipt of which is hereby acknowledged, the undersigned, sells, transfers and assigns this Note to ______________________________________________

________________________________________________________________________

________________________________________________________________________

(Please print or type name and address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

________________________________________

and does hereby irrevocably appoint ______________________________________________ Attorney, to transfer this Note on the books kept for registration thereof with full power of substitution.

Dated:___________________________________

Signature guaranteed:________________________

________________________________________

________________________________________

NOTE: The signature(s) to this Power must correspond with the name(s) as written upon the face of the Certificate(s) or Note(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee must be provided in accordance with the prevailing standards and procedures of the Paying Agent/Registrar. Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program acceptable to the Trustee.

LOAN AGREEMENT

This Loan Agreement is entered into as of September 28, 2022, by and between the City of Indianola Iowa (the "Issuer"), acting by and through the Board of Trustees (the "Board") of Indianola Municipal Utilities (the "Utility"), the governing body of the Municipal Communications Utility System (the "System") of the Utility, and Truist Bank, a North Carolina Banking Corporation (the "Bank"). The parties agree as follows:

1. The Bank shall loan to the Issuer the sum of $2,805,000, and the Issuer's obligation to repay hereunder shall be evidenced by the issuance of Taxable Communications Revenue Refunding Notes, Series 2022B, in the aggregate principal amount of $2,805,000 (the "Notes").

2. On September 12, 2022, the Board has adopted a certain master resolution (the "Master Resolution") and a certain series resolution (the "Series Resolution" and, together with the Master Resolution, the "Resolutions"), authorizing and approving this Loan Agreement and providing for the issuance and securing the payment of the Notes, the Resolutions are incorporated herein by reference, and the parties agree to abide by the terms and provisions of the Resolutions. The Notes and the interest thereon, together with the Parity Obligations (as defined in the Master Resolution) and any additional obligations as may be hereafter issued and outstanding from time to time under the conditions set forth in the Resolutions, shall be payable solely and only out of the future Net Revenues (as defined in the Master Resolution) of the System, a sufficient portion of which has been ordered set aside and pledged for such purpose under the provisions of the Resolutions, and from certain funds established in the Resolutions and pledged to the payment thereof.

3. The loan proceeds (the "Loan Proceeds") shall be used for the purposes set forth in the Series Resolution. Any remaining Loan Proceeds, including accrued interest, if any, shall be deposited in the Series 2022B Sinking Fund (as defined in the Series Resolution) and shall be held therein and used, along with other amounts on deposit in such fund, to pay interest due on the Notes on the first interest payment date.

4. The Notes, in substantially the form set forth in the Series Resolution, shall be executed and delivered to or on behalf of the Bank to evidence the Issuer's obligation to repay the amounts payable hereunder. The Notes shall be dated September 28, 2022, shall bear interest, shall be payable as to principal on the dates and in the amounts, shall be subject to prepayment prior to maturity and shall contain such other terms and provisions as provided in the Notes and the Series Resolution.

5. Neither this Loan Agreement nor any of the Notes shall constitute a general obligation of the Issuer, nor be payable by taxation, and under no circumstances shall the Issuer be in any manner liable by reason of the failure of the aforesaid Net Revenues to be sufficient to pay the Notes and the interest thereon or to otherwise discharge the Issuer's obligation hereunder.

6. This Loan Agreement is executed pursuant to the provisions of Section 384.24A of the Code of Iowa and shall be read and construed as conforming to all provisions and requirements of the statute.

IN WITNESS WHEREOF, we have hereunto affixed our signatures all as of the date first above written.

CITY OF INDIANOLA, IOWA, by and through the Board of Trustees of the Indianola Municipal Utilities

By________________________________________
Chairperson, Board of Trustees of the Indianola Municipal Utilities

Attest:

________________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

TRUIST BANK, a North Carolina Banking Corporation

By________________________________________
Its: ________________________________________

[Loan Agreement Signature Page]

September 28, 2022

City of Indianola, acting by and through
Board of Trustees of the Indianola Municipal Utilities
Indianola, Iowa

Truist Bank
a, North Carolina Banking
Charlotte, North Carolina

We have acted as Bond Counsel in connection with the issuance by the City of Indianola (the "Issuer"), in Warren County, Iowa, acting by and through the Board of Trustees (the "Board") of the Indianola Municipal Utilities (the "Utility"), the governing body of the Municipal Communications Utility System (the "System") of the Utility, of its Taxable Communications Revenue Refunding Note, Series 2022B (the "Note") in the amount of $2,805,000, dated September 28, 2022, in the denomination of $5,000. The Note was issued by the Issuer pursuant to a Master Resolution adopted by the Board of the Issuer on September 12, 2022 (the "Master Resolution"), and a series resolution adopted on September 12, 2022 (the "Series Resolution") and under and pursuant to a Loan Agreement dated as of September 28, 2022 (the "Loan Agreement") between the Issuer and Truist.

For the purpose of this opinion, we have examined the law and certified copies of the Loan Agreement, the Master Resolution, the Series Resolution, certain proceedings taken, and certain affidavits and certificates furnished by the Issuer in connection with the authorization of the Loan Agreement, the Master Resolution, the Series Resolution and the issuance of the Note. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certificates of public officials furnished to us without undertaking to verify such facts by independent investigation.

Based upon such examination, and assuming the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals, and assuming the genuineness of the signatures thereon and the accuracy of the facts stated therein, and on the basis of laws, regulations, rulings and decisions in effect on the date hereof, but excluding any pending legislation which may have a retroactive effective date prior to the date hereof, it is our opinion that:

1. The Note and the Loan Agreement are valid and binding special, limited obligations of the Issuer enforceable in accordance with their terms.

2. The Note, together with the Series 2022A Note (as defined in the Series Resolution) and any future Parity Obligations (as defined in the Master Resolution) are and will continue to be payable as to both principal and interest solely and only from the Net Revenues (as defined in the Master Resolution) of the System and, with respect to the Note, the amounts on deposit in certain funds and accounts held by the Issuer under the Loan Agreement and pledged to the payment thereof. The Note and the interest thereon are not payable in any manner by taxation and do not constitute an obligation of any kind of the Issuer. The Issuer shall not be liable by reason of the failure of the Net Revenues and the amounts on deposit in the funds and

accounts established under the Series Resolution pledged to the payment thereof to be sufficient for the payment of the Note.

3. The interest on the Note is not excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986.

4. The interest on the Note is not exempt from present Iowa income taxes.

We express no opinion regarding other federal or state tax consequences arising with respect to the Note.

The rights of the owners of the Note and the enforceability of the Note, the Loan Agreement, the Master Resolution, and the Series Resolution may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

DORSEY & WHITNEY LLP

## Wire Transfer Agreement

This Wire Transfer Agreement (the "Agreement") is dated as of September 28, 2022, by and between the City of Indianola Iowa, acting by and through the Board of Trustees of Indianola Municipal Utilities (the "Borrower"), and TRUIST BANK, a North Carolina Banking Corporation ("Lender").

### RECITALS

The Borrower is, simultaneously with the execution and delivery of this Agreement, executing and delivering a Municipal Telecommunications Utility Taxable Communications Revenue Refunding Note, Series 2022B (the "Contract"), between the Borrower and Lender. The purpose of the Contract is to provide for Lender's advance of $2,805,000.00 to the Borrower to enable the Borrower to refund outstanding indebtedness as described in the Note Resolution adopted on September 12, 2022, and to pay related financing costs.

In order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, Lender and the Borrower hereby agree to the following:

**Section 1. Wire Transfer Requirements**. In the event a wire transfer is made by Lender to disburse funds as contemplated by the Contract (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to Lender by a representative of the Borrower, subject to the terms and conditions set forth herein. For the purposes of this Agreement, a representative of the Borrower shall include employees and elected and/or appointed officials of the Borrower, bond counsel, the Borrower's legal counsel, the Borrower's financial advisor or other designated representative.

**Section 2. Verification Procedures**. Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Lender in person by a representative of the Borrower, Lender shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Borrower. The Borrower shall ensure that a representative of the Borrower will provide such verification to Lender. The Borrower shall not disclose, or allow to be disclosed, such Lender verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Borrower accepts the risk of such third party knowledge of the security procedures. If the Borrower has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or learns of any unauthorized transfer or of any discrepancy in a transfer request, then the Borrower shall notify Lender immediately.

**Section 3. Payee Identification**. The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Lender by a representative of the Borrower, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by Lender (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower acknowledges that Lender may make payment on the basis of the account number alone, that Lender is not obligated to detect such errors, and that the Borrower assumes the risk of any loss resulting therefrom.

**Section 4. Duty to Reconcile Written Confirmation**. Upon request from a representative of the Borrower, Lender shall use its best efforts to send a representative of the Borrower written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Borrower shall promptly review and reconcile the written confirmation of the Disbursement sent by Lender, and shall report to Lender in writing, promptly, but in no event later than ten (10) business days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. Lender and the Borrower agree that ten (10) business days is a reasonable time for the detection and reporting to Lender of such information. After that time, all items on the written confirmation will be considered correct and the Borrower will be precluded from recovering from Lender if such wire transfer identified in the written confirmation was actually made by Lender. For the avoidance of doubt, any such writings can be provided electronically.

**Section 5. Unauthorized Payments**. Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Borrower pursuant to Section 2, it shall be binding on the Borrower if Lender acted in good faith in making such Disbursement.

**Section 6. Recordation**. Lender may record any telephone conversation between Lender and a representative of the Borrower in order to reduce the risk of unauthorized or erroneous transfers. Lender may retain such recordings for as long as Lender may deem necessary.

**Section 7. Indemnification and Hold Harmless**. If Lender complies with the provisions of this Agreement, the Borrower agrees that Lender shall not be responsible for any communication or miscommunication by a representative of the Borrower, and the Borrower further agrees to indemnify, to the extent allowed by law, Lender and hold Lender harmless from and against any and all losses, claims, expenses, suits, costs or damages, demands or liabilities of whatever kind or nature, whether now existing or hereafter relating in any way to a wire transfer made pursuant to the Contract.

**Section 8. Applicable Law**. All wire transfer orders are governed by Article 4A of the Uniform Commercial Code, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of Lender and the Borrower regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

**IN WITNESS WHEREOF**, each of the parties has caused this Wire Transfer Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

CITY OF INDIANOLA, IOWA, by and through the Board of Trustees of the Indianola Municipal Utilities

By: ____________________________________
Chairperson, Board of Trustees of the Indianola Municipal Utilities

ATTEST:

By: ____________________________________
Board Secretary of the Board of Trustees of the Indianola Municipal Utilities

**TRUIST BANK**

By: ____________________________________

Name: ____________________________________

Title: ____________________________________



517813\00002\4856-3543-1472\3

# WIRE TRANSFER AGREEMENT

INDIANOLA MUNICIPAL UTILITIES

Electric • Communications • Water



# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Resolution setting a public hearing and letting dates for the Fiber 2022-NOFA7-Phase 1 project.

---

**Recommendation:** Roll call is in order.

**Attachments:** 1. Res 2022- set PH for Fiber 2022-NOFA7-Phase 1 Project

**RESOLUTION 2022-**

**RESOLUTION SETTING PUBLIC HEARING AND LETTING DATES FOR THE FIBER 2022-NOFA7-PHASE 1 PROJECT**

**WHEREAS,** the Board of Trustees deems it advisable and necessary to work on the Fiber 2022-NOFA7-Phase 1 Project (“Project”); and

**WHEREAS,** the Board of Trustees has caused to be prepared plans, specifications and form of contract together with an estimate of costs; and

**WHEREAS,** the plans, specifications and form of contract and estimate of cost may be adopted in a contract for the making of the public improvements, and it is necessary pursuant to Chapter 384, Code of Iowa, as amended, to hold a public hearing and to advertise for bids.

**NOW, THEREFORE, BE IT RESOLVED BY THE INDIANOLA MUNICIPAL UTILITIES BOARD OF TRUSTEES:**

Section 1: That this Board will meet on October 10, 2022, at 5:30 p.m. in the City Hall Council Chambers, Indianola, Iowa, at which time they will hold a public hearing on the plans and specifications for the aforementioned project. At the hearing, any interested person may appear and file objections to the proposed plans, specifications, form of contract, or estimated cost of the project.

Section 2: That this Board will meet on October 10, 2022, at 5:30 p.m., in the City Hall Council Chambers, Indianola, Iowa, and subsequent to the public hearing on said documents, it will consider all bids filed pursuant to the plans, specifications, form of contract, and cost for the aforementioned project.

Section 3: That the amount of the bid security to accompany each bid shall be in an amount which shall conform to the provisions of the notice to bidders as part of said specifications.

Section 4: Sealed proposals will be received at Indianola Municipal Utilities Customer Service Building, at 210 West 2$^{nd}$ Avenue, Indianola, Iowa until 1:00 p.m. on October 5, 2022. The bids will be acted upon by the Board of Trustees at its regular meeting to be held in the Council Chambers of the Indianola Municipal Building, Indianola, Iowa at 5:30 p.m. on October 10, 2022, or at such later time and place as may then be fixed.

Section 5: That the Notice to Bidders shall be posted in a relevant contractor plan room service with statewide circulation, in a relevant construction lead generating service with statewide circulation, and on the City of Indianola’s website, which shall be in accordance with the State Code of Iowa. Posting shall be not less than thirteen clear days nor more than forty-five days prior to October 5, 2022, which is hereby fixed as the date for receiving bids.

Section 6: That the City Clerk be and is hereby directed to publish notice of hearing once in the “Indianola Record Herald and Tribune”, a legal newspaper, printed wholly in the English language, published at least once weekly and having general circulation in this City. Publication shall be not less than four clear days nor more than twenty days prior to the date hereinafter fixed as the date for a public hearing on the plans, specifications, form of contract and estimate of costs for the project, the hearing to be at 5:30 p.m. on October 10, 2022.

Passed and approved this 12th day of September 2022.

____________________________
Lori Smith, Chairperson

ATTEST:

______________________
Jackie Raffety, City Clerk

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Consideration of the approval of the Certificate of Final Completion of the Fiber Network Extension to Water Resource Recovery Facility Project and the issuance of a hand written warrant for $29,547.65 to Murphy Tower Services.

---

**Recommendation:** Simple motion is in order.

**Attachments:** 1. Certificate

| INDIANOLA MUNICIPAL UTILITIES IMU Electric • Communications • Water | CERTIFICATE OF FINAL COMPLETION | |
|---|---|---|
| **PROJECT: Fiber Network Extension to Water Resource Recovery Facility** | **PROJECT NO.:NA** | **RESOLUTION NO.: 2022-009** |
| | | **CONTRACT DATE: 02/14/2022** |
| **FINAL COMPLETION DATE: 08/31/2022** | **CONTRACTOR: Murphy Tower Service** | **CONTRACT PRICE: $96,755.80** |
| **DATE ISSUED: 09/12/2022** | **DESCRIPTION OF PROJECT COMPLETED: Construction of an optical fiber network which splices into an existing IMU fiber facility and extends the IMU fiber facility to a point outside of the Indianola Water Resource Recovery Facility.** | |

***DEFINITION OF FINAL COMPLETION***

**The date of Final Completion of a Contract is the date when the construction or services are complete, in accordance with the Contract Documents including the General Conditions to the Construction Contract and the definition of "Final Completion" set forth therein, so that the Project or specified part of the project or Project Services can be utilized for the purposes for which it was intended and all Work as set forth on the Punch List issued upon Substantial Completion has been satisfactorily completed and all releases of liens have been received to the satisfaction of IMU.**

**TO: MURPHY TOWER SERVICE** **DATE OF SUBSTANTIAL COMPLETION: 06/30/2022**

**The Work performed under the Contract referenced above has been inspected by authorized representatives of Indianola Municipal Utilities and Contractor, and the Project (or specified part of the Project, as indicated above), is hereby declared to be completed. The date of Substantial Completion is the date upon which all guarantees, and warranties begin, except as noted below.**

**The Contractor accepts the above Certificate of Final Completion**

**CONTRACTOR – MURPHY TOWER SERVICE** **AUTHORIZED REPRESENTATIVE** Eli Shipley **DATE** 9-8-2022

**Final Payment in accordance with contract is hereby authorized**

**Approval by:**

**INDIANOLA MUNICIPAL UTILITIES COMMUNICATIONS SUPERINTENDENT** Kurt Ripperger **DATE** 9-8-2022

INDIANOLA MUNICIPAL UTILITIES

Electric • Communications • Water

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Consideration of the approval of a purchase power agreement with SE Municipal Iowa, LLC.

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**Recommendation:** Simple motion is in order.

**Attachments:** 1. #2859912 v1 Sandhills - Community Solar - PPA (REV 9-7-22) - Indianola Iowa

**SOLAR POWER PURCHASE AGREEMENT**

**BETWEEN**

**INDIANOLA MUNICIPAL UTILITIES (BUYER)**

**AND**

**SE MUNICIPAL IOWA, LLC (SELLER)**

**DATED AS OF ______________, 20____**

DOCS/2859912.1

Table of Contents

Table of Contents (continued)

# SOLAR POWER PURCHASE AGREEMENT

**THIS SOLAR POWER PURCHASE AGREEMENT** (“**Agreement**”) is made and entered into as the date of the cover page (“**Effective Date**”) and among the parties set forth in Exhibit 1 (each a “**Party**” and collectively, the “**Parties**”). The defined terms in Article I and Exhibit 1 shall apply throughout this Agreement. If there is a conflict between Article I and Exhibit 1, Exhibit 1 shall control.

## WITNESSETH

**WHEREAS**, Seller proposes to construct, own, operate and maintain a solar electric generating facility for the purpose of producing electric energy for sale to Buyer as more particularly described in Exhibit 1 (the “**Solar Energy Facility**”); and

**WHEREAS**, Buyer desires to purchase electric energy produced by the Solar Energy Facility from Seller, and Seller desires to sell such electric energy to Buyer; and

**WHEREAS**, the Parties desire to set forth in writing their respective rights and obligations with respect to the purchase and sale of such electric energy;

**NOW, THEREFORE**, in consideration of the mutual obligations and undertakings herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

## ARTICLE I
## DEFINITIONS

1.01 Defined Terms.

“Affiliate” shall mean, as to any Party, any Person (other than a natural person or a Tax Investor) that directly, or indirectly through one or more intermediaries, (i) controls, is controlled by, or is under common control with such Party, or (ii) is the beneficial owner of fifty percent (50%) or more of any class of equity securities of, or other ownership interests in, such Party or of which such Party is directly or indirectly the owner of fifty percent (50%) or more of any class of equity securities or other ownership interests.

“Agreement” shall mean this Solar Power Purchase Agreement, including all exhibits hereto, and any written amendments hereto that may be made from time to time in accordance herewith.

“Associated Party(ies)” shall mean, with respect to any Party, any Affiliate of such Party, any officer, director, trustee, fiduciary, employee, agent, representative, contractor or subcontractor of such Party.

“Buyer” shall have the meaning given in the Preamble.

“Buyer’s Cost to Cover” shall mean the difference between the Energy Price during the Measurement Period and the price Buyer paid the Municipal Energy Agency of Nebraska

("MEAN") for energy available from MEAN's portfolio as a replacement for the Energy during the Measurement Period when there is an Energy Shortfall.

"Capacity" shall mean the Solar Energy Facility's nameplate rating.

"Carryover" shall mean, for each Contract Year, one-half of one percent (0.5%) of the Target Energy Production for all previous Contract Years minus the summation of the actual amount of Energy in each such Contract Year subject to Curtailment below the Curtailment Threshold applicable to such Contract Year, but in no event less than zero.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Collateral Agent" shall have the meaning given in Section 7.02.

"Commercial Operations Date" shall mean the date when the Facility is ready to deliver power and energy, and the same has been tested and is ready to be placed in continuous normal operation. Seller will notify Purchaser when the Commercial Operation Date of the Plant has been determined as the Commercial Operations Date pursuant to Section 3.04(b).

"Commissioned" shall mean, with respect to any Module, that such Module has been installed and that Seller has taken all action necessary to enable the Module to commence the regular delivery of Energy.

"Committed Capacity" shall be as set forth in Exhibit 1.

"Confidential Information" shall mean proprietary or commercial information which if released would give advantage to business competitors. The existence of this Agreement shall not be considered Confidential Information.

"Contract Year" shall mean each consecutive twelve (12) month period beginning on the first January 1 after the Commercial Operations Date occurs.

"Contract Term" shall be as set forth in Exhibit 1.

"Costs" shall mean, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into a new arrangement or arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Curtailment" shall mean a reduction in delivery of Solar Energy Facility output due to an action or operational decisions made by and for the benefit of Buyer. Notwithstanding the foregoing, Curtailment shall not include reductions in delivery of Solar Energy Facility output due to: (1) Buyer maintaining or upgrading the Distribution System, or a third party maintaining or upgrading the transmission system in accordance with Good Utility Practices; (2) Force Majeure or emergency condition on the Distribution System or the transmission system owned by a third party; or (3) Buyer maintaining the reliability of the Distribution System or a third party maintain the reliability of the transmission system. For the avoidance of doubt, reduction in delivery of Solar Energy Facility output due to any such circumstances shall not be a breach of this Agreement by Buyer and shall not constitute Lost Production.

"Curtailment Threshold" shall mean, for each Contract Year, the lesser of (a) sum of (i) one half of one percent (0.5%) of the Target Energy Production for such Contract Year plus (ii) the Carryover and (b) one percent (1.0%) of the Target Energy Production for such Contract Year.

"Defaulting Party" shall have the meaning set forth in Section 10.03.

"Delivery Meter" shall have the meaning given in Section 5.04(a).

"Delivery Point" shall have the meaning given in Section 5.01(b).

"Designated Representative(s)" shall mean the representatives of Seller and Buyer designated pursuant to Sections 6.01(e) and 6.02(a), respectively.

"Dispute" shall have the meaning given in Section 10.04.

"Distribution System" shall mean the electric system facilities owned, leased or operated by Buyer and which are rated at or below a voltage level of __________ volts.

"Due Date" shall have the meaning given in Section 4.04(a)(i).

"Early Termination Date" shall have the meaning set forth in Section 10.03.

"Effective Date" shall mean the date set forth in the preamble.

"Energy" shall mean three-phase, sixty (60) hertz alternating current energy generated at the Solar Energy Facility.

"Energy Price" shall mean the price for Energy delivered to the Delivery Point, as escalated in accordance with Section 4.01(c).

"Energy Shortfall" shall have the meaning set forth in Section 6.04(a).

"Environmental Attributes" shall mean the aggregate amount of credits (including renewable energy credits and renewable energy certificates), set-offs, payments, rights, attributes, or other benefits of all kinds associated with or arising out of or otherwise corresponding to the Rated Capacity and associated Energy, or otherwise arising due to the production of Energy, and the sale and distribution of such Energy by Seller, Buyer and others, other than payments under this Agreement and Tax Benefits. Environmental Attributes shall include (i) environmental air quality credits, off-sets or other benefits related to the generation of Energy in a manner which reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any Law, and (ii) credits, off-sets, green pricing programs, renewable energy credit trading programs, or any similar program or benefits derived from the use, purchase or distribution of renewable energy from the generation of Energy pursuant to any Law.

"Event of Default" shall have the meaning given in Sections 10.01 and 10.02.

"Excused Delay" shall mean a delay in achieving the Commercial Operations Date due to Force Majeure, delay by Interconnection Provider in entering into or performing its obligations under the Interconnection Agreement or any other agreement, breach by Buyer of this Agreement (including Seller's exercise of any remedies for such breach), or any other action or inaction of Buyer or Interconnection Provider which prevents Seller from performing its obligations under this Agreement in a timely manner.

"Facility Debt" shall mean the obligations of Seller or a Seller Affiliate to any Lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest (including all interest accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Seller or a Seller Affiliate) on indebtedness, fees, expenses or penalties, amounts to fund reserves, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, including without limitation, reasonable attorney's fees. Facility Debt shall continue to constitute Facility Debt, notwithstanding the fact that such Facility Debt or any claim for such Facility Debt is subordinated, avoided or disallowed under the federal Bankruptcy Code or other applicable Law. Facility Debt shall also include indebtedness of Seller or a Seller Affiliate secured by the Solar Energy Facility and/or the Facility Site incurred in connection with a conversion of a construction loan or bridge loan, or refinancing of the Facility Debt.

"Facility Lease" shall have the meaning set forth in Section 10.02(a).

"Facility Site" shall mean the real property on which the Solar Energy Facility will be located.

"Financial Closing" shall mean the execution of loan agreements with the Lender or Lenders, or the execution of equity investment agreements with the Tax Investor or Tax Investors, providing for the construction financing of the Solar Energy Facility.

"Financing Documents" shall mean the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, pledge agreements, swap agreements, letters of credit and other documents evidencing, securing or otherwise relating to the development, bridge, construction and/or permanent debt financing or other extension(s) of credit for obtaining Facility Debt, including any credit enhancement, credit support, swaps, caps, floors, collars, hedging agreements, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller or a Seller Affiliate in connection with the development, construction, ownership, leasing, operation or maintenance of the Solar Energy Facility.

"Financing Party" shall mean any Person (including any Tax Investor) providing debt or equity financing (including lease financing, tax equity, equity contributions or equity commitments), refinancing of any such financing, or any guarantee, insurance, credit enhancement, swap, cap, floor, collar, hedging agreement, working capital financing, or credit support for or in connection with such financing or refinancing, in connection with the development, construction, ownership or leasing, operation or maintenance of the Solar Energy Facility, or any part thereof, including any trustee or agent acting on any such Person's behalf.

"Fitch" shall mean Fitch Ratings, Inc., or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

"Force Majeure" shall have the meaning given in Section 8.01.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts generally acceptable in the region in light of the circumstances.

"Governmental Authority" shall mean any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of competent jurisdiction, but excluding Buyer and any such agency, commission, department or other such entity acting in its capacity as lender or guarantor.

"Guaranteed Commercial Operations Date" shall be as set forth in Exhibit 1.

"Guaranteed Energy Production" shall be as set forth in Exhibit 1.

"Indemnifiable Cost" shall mean any cost, expense, damage, fine, penalty, liability or other loss, including reasonable out-of-pocket legal, accounting, consulting, engineering, investigatory, expert witness and other fees and expenses.

"Indemnified Party" shall have the meaning given in Section 9.02(e)(i).

"Indemnifying Party" shall have the meaning given in Section 9.02(e)(i).

"Insolation" shall mean the watt-hour per square meter insolation on the Facility Site, as measured by Seller's pyranometer or similar measurement device installed at the angle of Module tilt and located within the boundaries of the Solar Energy Facility. Insolation data will be time synchronized to Buyer's metering and historical data, will be made available to Seller, and shall be used to calculate Lost Production.

"Interconnection Agreement" shall mean an agreement entered into between Seller and Interconnection Provider providing for the interconnection of the Solar Energy Facility to Buyer's Distribution System.

"Interconnection Provider" shall be as set forth in Exhibit 1.

"Interconnection Provider's Interconnection Facilities" shall mean all equipment and facilities on Buyer's side of the Delivery Point for the purpose of interconnecting the Solar Energy Facility to Buyer's Distribution System.

"Interest Rate" means, on any date of determination, the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journa*l (the average thereof, if there is a range of such rates) as of such date of determination; provided, that the Interest Rate shall never exceed the maximum rate permitted by Law. If *The Wall Street Journal* ceases to publish the "prime rate," then Buyer and Seller shall agree as to a substitute reference that represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

"ITC" shall mean the investment tax credit established pursuant to Section 48 of the Internal Revenue Code of 1986, as it may be amended from time to time.

"Late Payment Rate" shall mean, for any period, the lesser of: (i) the Interest Rate plus one percent (1 %), or (ii) the maximum rate permitted by applicable Law.

"Law" shall mean: (i) any law, legislation, statue, act, rule, ordinance, decree, regulation, order, judgment, or other similar legal requirement, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

"Lender" shall mean any Financing Party providing debt financing, refinancing of any such financing, or any guarantee, insurance, credit enhancement, swap, cap, floor, collar, hedging agreement, working capital financing, or credit support for or in connection with such financing or refinancing of any such financing, in connection with the development, construction, ownership or leasing, operation or maintenance of the Solar Energy Facility.

"Lost Production" shall mean, for any hour, the amount by which the Maximum Facility Output (as defined below) is reduced due to a Curtailment above the Curtailment Threshold or a breach of the Agreement by Buyer (including Seller's exercise of any remedies for such breach).

"Maximum Facility Output" shall mean, for any hour, the amount of Energy that the Solar Energy Facility would have been able to produce during the hour, based on the average Insolation for such hour; provided that the Maximum Facility Output for any hour shall be reduced, but not below zero, to the extent that the Solar Energy Facility would not otherwise have been available during such hour due to a maintenance outage, derating, or other circumstance solely within the control of Seller.

"Measurement Period" shall have the meaning given in Exhibit 2.

"Module" shall mean a discrete unit of photovoltaic cells and inverter(s).

"Moody's" shall mean Moody's Investor Service, Inc. or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

"MW" shall mean one megawatt of alternating current electric capacity.

"MWh" shall mean one megawatt-hour of energy.

"New Solar Incentive" shall have the meaning set forth in Section 4.01(d).

"Person" shall mean any legal or natural person, including any individual, corporation, partnership, limited liability company, joint stock company, association, joint venture, trust, governmental or international body or agency, or other entity.

"Place of Delivery" shall mean Buyer's renewable energy account established by Buyer and maintained with the administrator of the applicable Environmental Attribute program(s), or such other location or account for the delivery to Buyer of the Environmental Attributes as Buyer may specify via written notice to Seller.

"Rated Capacity" means the sum of the Capacities of all Commissioned Modules.

"S&P" shall mean Standard & Poor's or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

"Seller" shall have the meaning given in the Preamble.

"Solar Energy Facility" shall mean Seller's photovoltaic electric generation facility at the Facility Site, as described in Exhibit 1.

"Solar Incentive(s)" shall mean any and all credits, rebates, subsidies, payments or other incentives that relate to the use of technology incorporated into the Solar Energy Facility or other similar programs available from the manufacturer of any part of the Solar Energy Facility; provided, however, that Solar Incentives excludes Environmental Attributes.

"Substantial Commercial Operation" shall have the meaning specified in Section 3.04(a).

"Target Energy Production" for any Measurement Period shall mean the amount for such Measurement Period set forth in Exhibit 2.

"Tax" shall mean any tax (including franchise tax), charge, fee, levy or other assessment imposed by any Governmental Authority and based on or measured with respect to net income or profits, including any interest, penalties or additions attributable or imposed with respect thereto, and any tax, charge, levy, fee or other assessment, including any transfer, gross receipts, sales, use, service, occupation, ad valorem, property, payroll, personal property, excise, severance, premium, stamp, documentary, license, registration, social security, employment, unemployment, disability, environmental (including taxes under Section 59A of the Code), add-on, value-added, withholding (whether payable directly or by withholding and whether or not requiring the filing of a tax return therefor), commercial rent and occupancy tax, and any estimated tax, deficiency assessment, interest, penalties and additions to tax or additional amounts in connection therewith, imposed by any Governmental Authority.

"Tax Benefits" shall mean federal, state or local investment tax credits (including ITCs), or any other tax credits or benefits which are or will be generated by the Solar Energy Facility, or any cash payments, outright grants of money or incentives from a Governmental Authority relating in any way to the development, ownership or operation of, or production from, the Solar Energy Facility other than Environmental Attributes.

"Tax Investor" shall mean any Person who acquires a direct or indirect interest in Seller as a part of a transaction to ensure that the Solar Energy Facility is owned in whole or in part by a Person able to use the Tax Benefits associated with holding an ownership interest in the Solar Energy Facility.

"Transmission System" shall be as set forth in Exhibit 1.

## ARTICLE II
## REPRESENTATIONS AND WARRANTIES

2.01 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by Laws affecting the rights of creditors generally.

(c) There is no pending or, to the knowledge of Buyer's, threatened action or proceeding affecting Buyer before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending against or being contemplated by Buyer or, to Buyer's knowledge, threatened against it.

(d) There are no approvals, Authorizations, consents, or other action required by any Governmental Authority necessary to authorize Buyer's execution and delivery of this Agreement.

(e) The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(f) The output of the facility is fully subscribed and Buyer meet the rural requirements of the United States Department of Agriculture Rural Utilities Service.

2.02 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action.

(c) The Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as enforceability may be limited to Laws affecting the rights of creditors generally.

(d) There is no pending or, to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending against or being contemplated by Seller or, to Seller's knowledge, threatened against it.

(e) The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party of any judgment, order, statute, or regulation that is applicable to Seller.

(f) There are no approvals, Authorizations, consents, or other action required by any Governmental Authority necessary to authorize Seller's execution and delivery of the Agreement.

## ARTICLE III
## <u>CONTRACT TERM; COMMERCIAL OPERATIONS DATE; CONDITIONS</u>

3.01 <u>General</u>. The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the end of the Contract Term; provided, however that except as expressly provided herein, Seller's obligation to sell and deliver Energy and Buyer's obligation to accept and purchase Energy shall begin on the Commercial Operations Date which shall be no later than December 31, 2023. Not later than two hundred and forty (240) days prior to the end of the Contract Term, Seller shall notify Buyer in writing of Seller's desire to continue operating the Solar Energy Facility beyond the Contract Term. Regardless of receipt of such notice, Buyer shall have the exclusive right to extend the Contract Term for two (2) consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (singularly, the "Extended Contract Term" and collectively, the "Extended Contract Terms") by providing written notice to Seller of Buyer's intent to extend the Contract Term at least one hundred eighty (180) days prior to the end of the initial Contract Term; provided that Buyer shall only have the right to extend the Contract Term, as provided above, if: (i) the Solar Energy Facility remains operational with respect to photovoltaic energy conversion and generation of electricity from sunlight, at the time of such election(s); and (ii) Seller has elected to extend the Facility Lease and the Generator Interconnection Agreement between Buyer and Seller, for a period of time equal to the Extended Contract Term(s). Notwithstanding any other term to the contrary, in the Facility Lease, Seller cannot exercise any right in the Facility Lease to extend the term thereof unless Seller gives Buyer the two hundred and forty (240)-day notice of Seller's desire to continue operating the Solar Energy Facility beyond the Contract Term as provided below.

Notwithstanding any other term to the contrary in this Agreement, if Buyer elects to extend the Contract Term as provided above, the Energy Price (defined below) during the Extended Contract Term(s) shall be the Energy Price in existence during the final year of the initial Contract Term, which shall not be subject to adjustment or escalation for the duration of the Extended Contract Term(s). If Seller has elected to extend the Facility Lease between Buyer and Seller, and Buyer declines, or fails to elect, extension of this Agreement in accordance with the above terms, Seller shall have the right to operate the Solar Energy Facility on the Facility Site to the extent provided in and pursuant to the Facilities Lease without further obligation or commitment to sell the output of the Solar Energy Facility to Buyer under this Agreement, and Buyer shall have no further right or ability to extend the Contract Term under this Section 3.01, provided that the termination of this Agreement or Buyer's declination or failure to elect extension of this Agreement shall be without prejudice to any rights or obligations of the Parties arising under this Agreement prior to such termination or declination or failure to elect extension of this Agreement. As used hereafter, "Contract Term" shall refer to both the initial Contract Term and the Extended Contract Term(s), as applicable.

3.02 Conditions to Seller's Obligations.

(a) This Agreement shall be legally binding from and after the Effective Date.

(b) Notwithstanding the foregoing, Seller's obligations to construct the Solar Energy Facility and to sell the Energy produced thereby to Buyer are expressly subject to the fulfillment of each of the conditions listed below, which Seller shall make commercially reasonable efforts to fulfill, in each case in form and substance satisfactory to Seller in Seller's reasonable discretion; provided that Seller may waive any such condition or may extend the date for fulfillment of any such condition, except that Seller may not waive or extend the date for fulfillment of the parent company guaranty or similar security under Section 3.02(b)(iv) which guaranty or similar security is an affirmative obligation of Seller to Buyer and not a condition to Seller's obligations:

(i) No later than ninety (90) days after the Effective Date, Seller shall have received all necessary Authorizations from the applicable Governmental Authorities for the development, construction, ownership, leasing, operation or maintenance of the Solar Energy Facility, and for the sale of the output thereof (excluding any Authorization which, by its nature, is not available or required prior to the commencement of construction, ownership, operation or maintenance of the Solar Energy Facility) and, with respect to each such Authorization, either: (A) all appeals or other challenges of such Authorization shall have been resolved to Seller's satisfaction, or (B) the time for filing appeals or other challenges to such Authorization shall have expired with no appeal or other challenge having been filed.

(ii) No later than ninety (90) days after the Effective Date, Seller and Interconnection Provider shall have entered into the Interconnection Agreement, and such Interconnection Agreement shall provide for the installation and energization of the Interconnection Provider's Interconnection Facilities at Buyer's cost within a time that will permit Seller to place the Solar Energy Facility in service in time to claim the ITC with respect to the Solar Energy Facility.

(iii) No later than ninety (90) days after the Effective Date, Buyer shall have provided to Seller a sufficient lease or similar property right to use the Solar Energy Facility Site, and any necessary leases, rights-of-way or utility or access easements related thereto to allow Seller to construct, operate and maintain the Solar Energy Facility for the Contract Term.

(iv) No later than ninety (90) days after the Effective Date, Seller shall have completed an evaluation of the Solar Energy Facility Site with respect to geotechnical conditions, environmental conditions, and obstructions indicating that the Solar Energy Facility can be constructed without substantial Facility Site remediation or substantially increased costs. From the Effective Date until the Commercial Operations Date, Seller shall provide to Buyer and maintain a parent company guaranty or similar security in an amount not less than one-hundred and ten percent (110%) of Buyer's anticipated costs and expenses during that same period, including Buyer's costs and expenses for (1) the purchase of the real property on which the Solar Energy Facility is to be located, (2) the design, acquisition and construction of infrastructure (including but not limited to a transformer) in connection with the operation of the Solar Energy Facility and anticipated delivery of energy to be produced by the Solar Energy Facility, and (3) remediation of the real property to return it to its original use. Buyer shall release this guaranty or security at Commercial Operations Date.

(v) No later than ninety (90) days after the Effective Date, Seller shall have determined that since the Effective Date, there has not been any change in any Law or in any operating standard applicable to Seller or the Solar Energy Facility which imposes material increased capital or operating costs on Seller, or materially decreases Seller's and Seller's owners' economic return from the ownership and operation of the Solar Energy Facility, including payments under this Agreement, Tax Benefits and Solar Incentives.

(vi) No later than one-hundred eighty (180) days after the Effective Date, the Financial Closing shall have occurred.

(c) If any condition set forth in Section 3.02(b) has not been satisfied or waived by Seller in writing on or before the date specified therein for reasons not due to act or omission of Seller, then Seller shall have the right to terminate this Agreement by written notice to Buyer no later than thirty (30) days after such date, without any further financial or other obligation to Buyer under this Agreement as a result of such termination. If Seller does not terminate this Agreement on or before the date that is thirty (30) days after the date for satisfaction of such condition, the applicable condition shall be deemed to have been waived. Notwithstanding anything to the contrary in this Agreement, the requirement that Seller provide a parent company guaranty or similar security under Section 3.02(b)(iv) is an affirmative obligation of Seller to Buyer and not a condition to Seller's obligations, and said requirement cannot be waived by Seller, nor shall said requirement be deemed waived under any circumstances.

3.03 Guaranteed Commercial Operations Date. If the Commercial Operations Date has not occurred by the Guaranteed Commercial Operations Date, Seller will pay Buyer delay damages ("Delay Damages") equal to the sum of (1) One-hundred Twenty Thousand Dollars ($120,000) plus (2) any "Delay/Termination Damages" (as defined below), and Buyer may also terminate this Agreement without further financial or other obligation on the part of either Party, other than for Seller to pay Buyer Delay Damages, by written notice to Seller no later than forty-five (45) days after the Guaranteed Commercial Operations Date. If Buyer does not deliver notice of termination by the end of such forty-five (45) day period, or if Commercial Operation is achieved prior to delivery of Buyer's notice during such forty-five (45) day period, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.03. If Buyer terminates this Agreement pursuant to this Section 3.03, Delay/Termination Damages shall equal the sum of (1) Buyer's costs and expenses for the purchase of the real property on which the Solar Energy Facility is to be located, (2) Buyer's costs and expenses for the design, acquisition and construction of infrastructure (including but not limited to a transformer) in connection with the operation of the Solar Energy Facility and anticipated delivery of energy to be produced by the Solar Energy Facility, and (3) Buyer's costs and expenses for remediation of the real property to return it to its original use, less the net amounts received by Indianola Utilities from its sale of said real property and infrastructure. If Buyer does not terminate this Agreement pursuant to this Section 3.03, Delay/Termination Damages shall equal $0. If Commercial Operation is achieved after the Guaranteed Commercial Operations Date and prior to delivery of Buyer's notice of termination during the above-referenced forty-five (45) day period, or if Buyer does not deliver a notice of termination, the Delay Damages shall be increased by an additional $45,000 plus $1,000 per day for each day between the end of the 45-day period and Commercial Operation.

3.04 Substantial Commercial Operation.

(a) Seller may declare the Solar Energy Facility to have achieved substantial commercial operation ("Substantial Commercial Operation") provided that the Rated Capacity is at least ninety percent (90%) of the Committed Capacity.

(b) If Seller declares the Solar Energy Facility to have achieved Substantial Commercial Operation, the date of Substantial Commercial Operation and stated in the notice given under Section 5.09(c) shall be deemed to be the Commercial Operations Date for all purposes under this Agreement.

3.05 Municipal Ordinances, Zoning and Permit Requirements

Seller shall comply with all ordinances, zoning and permit requirements of the City of Indianola, Iowa, and Warren County, Iowa, it being understood and agreed that the Board of Trustees of Indianola Utilities is not the governing body regarding said ordinances, zoning and permit requirements and nothing in this Agreement shall be deemed a waiver of such ordinances, zoning and permit requirements.

## ARTICLE IV
## PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES

4.01 Purchase and Sale.

(a) Purchase and Sale. Following the Commercial Operations Date and continuing throughout the Contract Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and accept from Seller, all of the Energy and Environmental Attributes produced by the Solar Energy Facility and delivered to the Delivery Point and Place of Delivery at the Energy Price. For the Energy Price, Buyer shall have all rights to claim the capacity associated with the Solar Energy Facility, including without limitation the right to claim the capacity for purposes of resource adequacy. The Solar Energy Facility will be designed, constructed and operated so that the nameplate capacity does not exceed the Committed Capacity size. Seller acknowledges that Buyer is not obligated to compensate Seller for the delivery of excess Energy when the Solar Energy Facility generates power in amounts above the Committed Capacity. Seller waives any right to seek the PURPA avoided cost rate.

(b) Lost Production. In any month in which there is Lost Production, Buyer shall pay Seller an amount equal to the sum of: (i) the product of the Energy Price multiplied by the amount of Lost Production, and (ii) any Solar Incentives that Seller would have received with respect to the Lost Production. If Lost Production results from Buyer's need to avoid breach of or default under its obligations under a total-requirements wholesale contract or similar obligation, except Buyer's contracts and obligations with MEAN, Buyer shall remain obligated to Seller under this provision, Seller shall have no liability to Buyer, and Buyer shall hold Seller harmless for any such breach or default. For avoidance of doubt, compliance with Buyer's present contracts and obligations with MEAN shall not result in Lost Production or breach or default of this Agreement.

(c) Energy Price. The price for Energy and Environmental Attributes produced by the Solar Energy Facility, and for Lost Production, shall be as set forth in Exhibit 1.

(d) New Solar Incentives. If there is any New Solar Incentive for which the Solar Energy Facility or the Seller is eligible, Seller shall use commercially reasonable efforts to qualify for such New Solar Incentive, and if it does so qualify, it will pay Buyer fifty percent (50%) of the proceeds actually received from such New Solar Incentive, net of (i) any cost of applying for and qualifying for such New Solar Incentive, (ii) any tax imposed on Seller's receipt of the proceeds of the New Solar Incentive, and (iii) any associated reduction in any other Solar Incentive or other tax or economic benefit to Seller from the ownership or operation of the Solar Energy Facility, or the sale of the output thereof. For purposes of this Section 4.01(d), a "New Solar Incentive" is a state or local financial benefit or tax incentive enacted after the Effective Date, which is not intended to replace or substitute for a Solar Incentive in existence on the Effective Date, which does not require any modification to the Solar Energy Facility to qualify for such benefit or incentive, and which does not lead to a reduction or recapture of any Solar Incentive or Tax Benefits that would otherwise be available to Seller or, if Seller is a pass-through entity for tax purposes, to its owners and equity investors.

(e) New Environmental Attributes. If any new Environmental Attribute becomes available for which the Solar Energy Facility or Seller or Buyer is eligible, Seller shall consult with Buyer. Upon Buyer's request after consultation, Seller shall use commercially reasonable efforts to qualify for such new Environmental Attribute, and if it does so qualify, Seller shall deliver the new Environmental Attribute to Buyer under Section 4.01 of this Agreement and Buyer shall reimburse Seller for its reasonable cost of applying for and qualifying for such new Environmental Attribute. Seller's failure to obtain any new Environmental Attribute despite using commercially-reasonable efforts to do so shall not constitute a breach or default under this Agreement.

4.02 Test Energy. At Buyer's option, Buyer shall purchase all Energy generated during all testing conducted prior to the Commercial Operations Date at eighty-five percent (85%) of the Energy Price.

4.03 Billing.

(a) Seller shall read meters promptly following the end of each month. The amount of Energy delivered to Buyer during the preceding month shall be determined from such readings, as such readings are adjusted pursuant to Section 5.06.

(b) Seller shall render bills for amounts due hereunder by e-mail, or other mutually agreed electronic means, as soon as practicable following the meter reading, and shall incorporate such information as may reasonably be necessary or desirable to determine the payments for Energy delivered during the preceding month, and other amounts due hereunder, including indemnification payments. Seller shall send bills to the address(s) in Exhibit 4.

(c) If this Agreement expires or is terminated, Seller shall, within five (5) Business Days after the termination or expiration, or as soon thereafter as practicable, provide a final billing statement to Buyer.

(d) If Seller owes any amount to Buyer pursuant to this Agreement, Buyer shall send Seller a statement of the amount then due in accordance with the above procedures.

4.04 Payment and Interest.

(a) Payment.

(i) All payments shown to be due on a bill shall be due and payable not later than thirty (30) days after receipt (the "Due Date"). A Party noticing or suspecting an error in a bill or a component thereof such as a meter reading error shall promptly notify the other Party of the same.

(ii) If the paying Party, in good faith, disputes a portion of any bill, the paying Party shall render payment for the undisputed portion of such bill to the billing Party. Upon resolution of the Dispute, any amount found to be due and payable to the billing Party shall be paid to the billing Party in accordance with Section 4.04(b)(ii).

(iii) All payments on account of errors of any kind, including overpayments and errors in billing or in metering, shall include interest at the Prime Rate accruing daily from the date of such erroneous payment to the date of payment. If, in the case of a Delivery Meter error, the date of the error cannot be determined, then interest shall accrue on the adjusted amount from the date set in accordance with Section 5.06. Notwithstanding the foregoing, neither Party may bill the other Party for principal or interest related to a meter error that occurs or is deemed to occur more than six (6) months prior to the Party discovering the error giving the other Party written notice of such discovery.

(iv) The paying Party shall render payment by wire transfer, ACH, or such other payment method as the Parties mutually agreed upon. Payments shall be sent to the address(s) set forth in Exhibit 4, or if payment is by wire transfer, in accordance with wiring instructions provided by the receiving Party's representative identified in Exhibit 4.

(v) The obligations of Buyer to make payments under this Agreement shall be an operating expense of Buyer's municipal electric utility ("MEU") and is payable solely out of the future net revenues of the MEU and other moneys legally available. The obligation of Buyer to make payments under this Agreement shall not be a general obligation or a debt or charge against Buyer within the meaning of any constitutional or statutory debt limit provision, nor shall the obligation of Buyer to make payments under this Agreement be payable in any manner by taxation. Buyer shall not take any action intended to shield moneys from being available to Buyer to make payments under this Agreement or to subordinate the payment obligations hereunder other than as applicable law may require.

(b) Interest.

(i) If the paying Party fails to pay all or a portion of the undisputed amounts billed within the time stated in Paragraph (a) hereof, the paying Party shall owe interest on the unpaid portion of the bill, which interest shall accrue daily at the Late Payment Rate, from the Due Date until paid.

(ii) If any portion of a disputed amount is ultimately determined to be due to the billing Party, such amount shall be due and payable not later than ten (10) Business Days after resolution of the Dispute, and the paying Party shall owe interest on such portion of such disputed amount to the extent that such portion is determined to be due and owing to the billing Party, which interest shall accrue daily at the Late Payment Rate, from the original Due Date of such amount until such amount is paid.

(c) No Set-off. All payments made by either Party shall be free and clear of, and without any deduction for or on account of, any set-off, counterclaim, or other liability to the billing Party, except to the extent required by Law.

## ARTICLE V
## DELIVERY OF ENERGY AND ENVIRONMENTAL ATTRIBUTES

5.01 Delivery of Energy.

(a) Characteristics. Energy to be furnished in accordance with Good Utility Practices.

(b) Delivery Point. All Energy sold by Seller to Buyer under this Agreement shall be delivered by Seller to the point of interconnection of the Solar Energy Facility on Seller's side of the transformer that connects the Solar Energy Facility with Buyer's Distribution System, as defined in the Interconnection Agreement (the "Delivery Point"). Energy shall be delivered by Seller to the Delivery Point free and clear of all liens, claims and encumbrances.

(c) Title and Risk of Loss. Title to Energy, and risk of loss with respect thereto, shall pass from Seller to Buyer at the Delivery Point.

5.02 Transfer and Delivery of Environmental Attributes.

(a) Environmental Attributes. Following the Commercial Operations Date and continuing throughout the Contract Term, and for any Test Energy purchased by Buyer prior to the Commercial Operations Date, as between Buyer and Seller, Buyer shall own or be entitled to claim all Environmental Attributes associated with the Energy produced by the Solar Energy Facility to the extent such Environmental Attributes may exist during the Contract Term, including all rights and authority for Buyer to register, hold, manage and retire such Environmental Attributes in Buyer's own name and to Buyer's account, including any rights associated with any renewable energy information or tracking system that may be established with regard to monitoring, tracking certifying, or trading such Environmental Attributes.

(b) Receipt of Environmental Attributes. Buyer shall be responsible for all arrangements and other actions required to make Buyer ready to receive the Environmental Attributes into its account at the Place of Delivery (or, in the case of any Environmental Attributes that, by their nature, do not have a place of delivery, to be capable of receiving within the applicable Environmental Attribute program(s) and associated monitoring, tracking, certification and/or trading system(s)).

(c) Clear Title. Seller represents and warrants that, at the time of sale to Buyer of all Environmental Attributes as provided herein, (i) such Environmental Attributes shall not have been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable energy program or standard, including any greenhouse gas reduction requirements; and (ii) Buyer shall possess all right, title to and interest in such Environmental Attributes, free and clear of any liens or other encumbrances created by or through Seller.

(d) Risk of Loss. Risk of loss of any Environmental Attributes shall transfer from Seller to Buyer at the time the same are generated by the Solar Energy Facility.

(e) Attestation of Environmental Attributes. Seller shall present to Buyer a form set forth in Exhibit 3 with each invoice attesting to the amount of Energy produced by the Solar Energy Facility and delivered to Buyer and that Seller has not transferred to any other person the Environmental Attributes associated with such Energy.

5.03 Communications and Data Logging Systems. Seller shall provide Buyer and, provided Buyer is a member of the Municipal Energy Agency of Nebraska at the time, the Municipal Energy Agency of Nebraska, with access to the Solar Energy Facility, upon reasonable advance notice and during normal business hours, as may be necessary and appropriate to enable Buyer to install and maintain Buyer's remote terminal in a manner consistent with Good Utility Practice, provided that such access shall not unreasonably interfere with Seller's normal business operations. While at the Solar Energy Facility, Buyer shall observe such safety precautions as may be reasonably required by Seller and communicated to Buyer in writing.

5.04 Delivery Metering.

(a) Energy delivered by Seller to Buyer shall be measured by a meter located at the Delivery Point (the "Delivery Meter"), and shall have the metering instrument transformer, which measures the output of the Solar Energy Facility, on the side of the step-up transformer for the Solar Energy Facility set forth in Exhibit 1.

(b) Seller shall purchase and install the Delivery Meter, in accordance with Seller's standards and specifications for such metering, in effect on the effective date of the Interconnection Agreement, and shall operate and maintain the Delivery Meter at no cost to Buyer. The Delivery Meter shall be used for measuring the amount of Energy delivered to the Delivery Point under this Agreement.

(c) Buyer shall provide Seller full, real-time read access to Delivery Meter data. Seller shall use such data to bill Buyer for Energy.

5.05 Testing.

(a) The accuracy of the Delivery Meter shall be tested and verified, at Seller's expense, prior to the Commercial Operations Date by Buyer.

(b) Seller, at its expense, shall conduct a Delivery Meter test once every two (2) years following the Commercial Operations Date. If such test establishes that the Delivery Meter is not accurate, the Delivery Meter shall be appropriately adjusted or repaired at Seller's expense. Buyer reasonably may request additional Delivery Meter tests at any time. With respect to any such additional Delivery Meter test, if the Delivery Meter when tested is found to be inaccurate by at least two percent (2%), Seller shall pay for any such additional Delivery Meter test. If the Delivery Meter is accurate to within two percent (2%), then Buyer shall pay for such additional Delivery Meter test. In either case, the Delivery Meter shall be appropriately adjusted or repaired at Seller's expense to correct the accuracy. Buyer may install a backup or check meter at its sole discretion and expense.

5.06 Corrections. If the Delivery Meter is found at any time to be inaccurate by more than two percent (2%), retroactive billing adjustments for such errors shall be made for (i) the actual period during which inaccurate measurements were made, if that period can be reasonably determined, or (ii) if the period during which inaccurate measurements were made cannot be reasonably determined, one-half of the period from the date of the last previous test of the Delivery Meter, but in either case not to exceed six (6) months. If the difference of the payments actually made by Buyer minus the adjusted payment is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest at the Prime Rate from the date the original bill was due through the date of payment and such payment (including such interest) shall be made within thirty (30) days after receipt of a corrected billing statement.

5.07 Meter Maintenance. Each Party shall have the right to have a representative present whenever the other Party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Delivery Meter. Each Party shall give timely notice to the other Party in advance of taking any such actions. A Party's failure to have a representative present whenever the other Party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Delivery Meter shall not affect the validity of such action, provided that the notice required under the preceding sentence has been given.

5.08 Interconnection Agreement. The provisions of Sections 5.04 through 5.07 are subject to the applicable requirements of the Interconnection Agreement and any Governmental Authority with jurisdiction over the Delivery Meter. If any of the provisions of Sections 5.04 through 5.07 are inconsistent with such requirements, such requirements shall take precedence.

5.09 Start-Up Procedures.

(a) Expected Commercial Operations Date. Throughout construction, start-up, and testing, Seller shall keep Buyer informed of any changes to the expected Commercial Operations Date for the Solar Energy Facility.

(b) Start-Up. Not less than one (1) month prior to the projected Commissioning of the first Module at the Solar Energy Facility, Seller shall provide to Buyer a projected schedule for the start-up and testing of the Solar Energy Facility.

(c) Notice of Commercial Operations Date. As soon as practicable after completion of start-up and successful testing of the Solar Energy Facility (in compliance with the Interconnection Agreement and any applicable Law or Authorization, and any applicable requirement of any Governmental Authority), and provided that the Rated Capacity is at least ninety percent (90%) of the Committed Capacity, Seller shall provide Buyer a notice specifying when the Commercial Operations Date occurred.

5.10 Interconnection.

(a) Seller shall enter into an Interconnection Agreement with Interconnection Provider providing for the interconnection of the Solar Energy Facility with the Distribution System. Buyer shall be responsible for all costs associated with the interconnection of the Solar Energy Facility with the Distribution System, including all related capital costs, if any, as well as ongoing maintenance costs. Seller shall be responsible for all costs associated with system impact studies, facilities studies and upgrades required on any third-party transmission system in order to accommodate the interconnection of the Solar Energy Facility.

(b) Buyer shall be responsible for arranging for the transmission of Energy at and beyond the Delivery Point, scheduling of such transmission and any ancillary services required for such transmission, and all fees associated with such transmission and ancillary services, including congestion losses, scheduling services, balancing excluding generator imbalance, cash out of imbalances excluding generator imbalance, and any other charges resulting from the scheduling of an intermittent resource. Seller shall be responsible for any generator imbalance charges.

## ARTICLE VI
## RIGHTS AND OBLIGATIONS

6.01 Rights and Obligations of Seller.

(a) Design, Construction and Operation. Seller, at its sole cost, shall design, construct, operate and maintain the Solar Energy Facility and shall be responsible for all costs of decommissioning. Seller warrants that it will maintain and operate the Solar Energy Facility in accordance with this Agreement, Good Utility Practice, applicable Open Access Transmission Tariffs and associated transmission provider business practices and protocols, applicable reliability standards, regional criteria, and regulations, Federal Aviation Administration requirements, and the Law and shall not increase or decrease the Nameplate Capacity without the prior written consent of Buyer as evidenced by written agreement signed by authorized representatives of both Parties. At the end of the Solar Energy Facility's useful life, Seller shall be responsible for all costs associated with decommissioning or repowering the Solar Energy Facility; provided, however, that repowering the Solar Energy Facility shall be prohibited unless Buyer agrees to an amendment of this Agreement for an extension of the Term or a new agreement for a new term for the Energy and Environmental Attributes from the repowered Solar Energy Facility.

(b) Solar Incentives. Seller shall be the owner of all Solar Incentives, and is entitled to the benefit of any ITCs and other tax deductions, credits and incentives related to the Solar Energy Facility, and Buyer's purchase of Energy does not include Solar Incentives or the right to Tax Benefits or any other attributes of ownership and operation of the Solar Energy Facility except Environmental Attributes (which shall accrue to Buyer). If any Solar Incentive is paid directly to Buyer, Buyer shall immediately pay such amounts to Seller.

(c) Notice of Change in Delivery. Seller shall use its commercially reasonable efforts to give advance notice to Buyer in the event of either an interruption in the delivery of Energy or a significant variation in the quantity of Energy delivered (other than interruptions or variations due to changes in levels of Insolation), whether or not caused by Force Majeure.

(d) Access to Solar Energy Facility. Seller shall allow representatives of Buyer and, if Buyer is then a member of the Municipal Energy Agency of Nebraska, the

Municipal Energy Agency of Nebraska to have access to the Solar Energy Facility, upon advance notice and during normal business hours, to observe construction, operation and maintenance of the Solar Energy Facility, and to make inspections and obtain information required in connection with this Agreement. While at the Solar Energy Facility, such representatives shall observe such safety precautions as may be required by Seller and communicated to Buyer and shall conduct themselves in a manner that will not interfere with the construction, ownership, operation or maintenance of the Solar Energy Facility.

(e) Designated Representative. Seller shall designate one or more representatives (each a "Designated Representative") to maintain communications with Buyer's Designated Representative(s), and to facilitate coordination between Buyer and Seller during the Contract Term.

(f) Information and Data. Seller shall supply any information or data required by Buyer to comply with the requirements of any applicable Law or Authorization, or the requirements of any Governmental Authority and any other information or data related to the operation or maintenance of the Solar Energy Facility reasonably requested by Buyer in order to verify amounts due hereunder and verify compliance with the terms and conditions of this Agreement; provided, however, that Seller shall not be required to incur any expense pursuant to this provision unless Buyer agrees to reimburse Seller for such expense.

(g) Progress Reports. Beginning on the last day of the first month following the Effective Date, and on the last day of each month thereafter until the Commercial Operations Date, Seller shall provide Buyer with a reasonably detailed written report on the progress of the development of the Solar Energy Facility during the preceding month. Seller shall be available to meet with Buyer at Seller's offices or by telephone call as is reasonably requested by Buyer, to provide additional information or clarification of the written report on the progress of the development of the Solar Energy Facility.

(h) Environmental Attributes. Seller shall take all actions reasonably necessary to enable Buyer to receive all Environmental Attributes associated with the Solar Energy Facility, provided, however, that Seller shall not be required to incur any expense pursuant to this provision unless Buyer agrees to reimburse Seller for such expense.

6.02 Rights and Obligations of Buyer.

(a) Designated Representative. Buyer shall designate one or more representatives (each a "Designated Representative") to maintain communications with Seller's Designated Representative(s), and to facilitate coordination between Buyer and Seller during the Contract Term.

(b) Solar Incentives. Buyer shall take all actions reasonably necessary to enable Seller to receive the full benefits of any Solar Incentives during the Contract Term, subject to Section 4.01(d) which shall control over this Section 6.02(b); provided, however, that Buyer shall not be required to incur any expense pursuant to this provision unless Seller agrees to reimburse Buyer for such expense.

(c) Environmental Attributes. If any Environmental Attributes are conveyed directly to Seller, Seller shall immediately transfer such Environmental Attributes to Buyer.

6.03 Information and Data. Buyer shall supply any information or data required by Seller to comply with the requirements of any applicable Law or Authorization, or the requirements of any Governmental Authority, provided, however, that Buyer shall not be required to incur any expense pursuant to this provision unless Seller agrees to reimburse Buyer for such expense. Buyer shall provide Seller with any other information or data reasonably requested by Seller in order to verify amounts due hereunder and verify compliance with the terms and conditions of this Agreement.

6.04 Guaranteed Energy Production.

(a) In each consecutive twelve (12) month period, beginning on the anniversary of the first day of the month following the month in which the Commercial Operations Date occurs (each, a "Measurement Period"), if the Guaranteed Energy Production for such Measurement Period exceeds the sum of the actual Energy production, the amount of such excess shall be the "Energy Shortfall" for such Measurement Period. If the final Measurement Period is less than twelve (12) full months, the Guaranteed Energy Production for such last Measurement Period shall be prorated based on the number of days in such last Measurement Period, with appropriate adjustments for monthly variations in the level of Insolation at the Solar Energy Facility Site.

(b) If there is an Energy Shortfall for any Measurement Period, then within thirty (30) days following delivery of Buyer's invoice as set forth in Section 6.03(c), Seller shall (i) pay to Buyer liquidated damages in an amount equal to the product of (A) the Energy Shortfall, in MWh, multiplied by (B) Buyer's Cost to Cover and (ii) deliver to Buyer all replacement Environmental Attributes.

(c) No later than thirty (30) days after the end of each Measurement Period, Seller shall deliver to Buyer (1) Seller's computation¸ in reasonable detail, of the sum of the actual Energy production for such Measurement Period, and (2) Seller's computation¸ in reasonable detail, of the amount of the Energy Shortfall, in MWh, for such Measurement Period, accompanied by a request for Buyer to provide an invoice pursuant to this Section 6.04(c). Within sixty (60) days after receipt of Seller's computation and request for an invoice, Buyer shall deliver to Seller an invoice showing in reasonable detail (i) Buyer's computation of any amount due Buyer for liquidated damages pursuant to Section 6.04(b) based on Seller's computation of the Energy Shortfall, and (ii) the amount of Environmental Attributes associated with the Energy Shortfall, which, if not already included in Buyer's purchase of replacement energy and the amount of liquidated damages Seller must pay to Buyer, Seller must deliver to Buyer as replacement Energy Attributes. Upon delivery of Buyer's invoice to Seller, (i) Seller shall, within ten (10) days, pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice and (ii) Seller shall, at its sole cost, deliver to Buyer within thirty (30) days replacement Environmental Attributes having the same attributes as the Environmental Attributes generated by the Solar Energy Facility, if such Environmental Attributes were not included in Buyer's purchase of replacement energy and the amount of liquidated damages Seller must pay to Buyer. Any objections Seller may have regarding any disputed portion of an invoice shall be raised by Seller within ninety (90) days after receiving the invoice. All Disputes regarding such invoices shall be subject to Section 10.04. Objections not made by Seller within the twelve (12) month period shall be deemed waived.

(d) Each Party agrees and acknowledges that: (i) the damages that Buyer would incur in the event of an Energy Shortfall during any Measurement Period would be difficult or impossible to predict with certainty, and (ii) the liquidated damages contemplated by this Section are a fair and reasonable calculation of such damages.

## ARTICLE VII
## SALE, TRANSFER OR ASSIGNMENT

7.01 Generally.

(a) Except as provided in Section 7.02 or Section 7.03, neither Party may assign this Agreement without the express written consent of the other Party.

(b) Notwithstanding Section 7.01(a), (i) either Party may assign this Agreement to an Affiliate without the consent of the other Party, provided, however, that the assigning Party shall remain liable for all of its obligations under this Agreement unless and until the consent of the other Party is secured in accordance with Paragraph (a); (ii) Buyer or Seller may assign this Agreement to any purchaser or transferee of all or a substantial portion of its assets with the other party's express written consent, which the non-assigning party shall not unreasonably withhold, condition or delay, provided the assignee expressly assumes and agrees to perform each and every obligation of the assigning party under this Agreement.

7.02 Finance Assignments. Either Party may collaterally assign this Agreement to any Lender or any Lender's agent, without the consent of the other Party, in connection with the financing of the construction and operation of the Solar Energy Facility, including the assignment of a security interest in this Agreement to the United States Rural Utility Service ("RUS"), regardless of whether such financing is provided by such Lender directly or indirectly through one or more intermediaries (each such assignee being referred to herein as a "Collateral Agent"); provided, however, that no such assignment shall be effective for purposes of this Section until the assigning Party shall have notified the other Party of such assignment, which notice shall include the name and address of the Collateral Agent. After any assignment to the Administrator of RUS, the Administrator may, without the consent of the other Party, assign its interest in the Agreement to a third party. So long as any assignment of which the other Party has been notified, or any consolidation, modification or extension of any such assignment, shall remain outstanding, the following provisions shall apply:

(a) The assigning Party shall, upon serving upon the other Party any notice pursuant to this Agreement, also serve a copy of such notice upon each Collateral Agent at the address provided for in the notice referred to above. No notice issued by the assigning Party pursuant to this Agreement shall be deemed to have been duly given unless and until a copy thereof shall have been so served.

(b) A Party providing notice of any Event of Default by the other Party shall provide such notice to such Collateral Agent, and the notifying Party will accept a cure to an Event of Default of the other Party performed by such Collateral Agent, so long as the cure is accomplished within the time allowed in the Consent and Acknowledgement attached as Exhibit 5.

(c) The making of an assignment pursuant to this Section in and of itself shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Collateral Agent, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Collateral Agent, as such, to assume the performance of any of the terms or conditions on the part of the assigning Party to be performed hereunder.

(d) Upon request from the other Party, a Party will enter into a Consent and Acknowledgement with any Lender, in the form attached as Exhibit 5.

7.03 Assignment to Municipal Energy Agency of Nebraska. Buyer may assign this Agreement to the Municipal Energy Agency of Nebraska without consent of Seller provided that the Municipal Energy Agency of Nebraska expressly assumes and agrees to perform each and every obligation of Buyer under this Agreement. If such an assignment occurs, Seller shall have no further obligation to Buyer.

## ARTICLE VIII
## FORCE MAJEURE

8.01 Force Majeure Defined. The term "Force Majeure" as used herein, shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), pandemics, blockages, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to equipment of facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts or failure to act on the part of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions, arrests and restraints. Force Majeure does not include the inability of a Party to obtain financing, property, equipment or materials necessary to construct the Solar Energy Facility (except to the extent that the inability to obtain property, equipment or materials is itself due to Force Majeure as defined herein, suffered by Seller's supplier), financial hardship or general economic or financial conditions. Force Majeure also does not include a covered event under Seller's insurance unless Seller reasonably pursues all commercially-reasonable steps to recover pursuant to such insurance but is denied recovery thereunder.

8.02 Effect of Force Majeure. If either Party is rendered wholly or partly unable to perform its obligations under this Agreement or its performance is delayed because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform or delayed in performing due to the Force Majeure to the extent so affected, provided that:

(a) The Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such affect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence; provided that failure to provide notice in accordance with this Clause (a) shall not affect the ability of a Party to claim Force Majeure with respect to any period after such notice is actually provided.

(b) Such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party;

(c) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and

(d) The Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible.

8.03 Payment Obligations Not Excused. Notwithstanding anything in this Article to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

8.04 Deadlines Extended. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period except as otherwise specifically provided in this Agreement; provided, however, that in no event shall a Force Majeure extend the Contract Term.

## ARTICLE IX
## RISK OF LOSS AND INDEMNIFICATION

9.01 Risk of Loss.

(a) Seller. As between Buyer and Seller, Seller shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to any property located on Seller's side of the Delivery Point; and (ii) with respect to any personal injury or death, or loss of or damage to any other property arising out of the construction, ownership or leasing, operation or maintenance of any property of Seller or Seller's Associated Parties on Seller's side of the Delivery Point; provided, however, that Seller shall not be responsible for any loss, damage, or injury to the extent that such loss, damage, or injury arises out of the negligence or willful misconduct of Buyer or Buyer's Associated Parties.

(b) Buyer. As between Buyer and Seller, Buyer shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to any property located on Buyer's side of the Delivery Point, and (ii) with respect to any personal injury or death, or loss of or damage to any other property arising out of the construction, ownership, operation or maintenance of any property of Buyer or Buyer's Associated Parties on Buyer's side of the Delivery Point, provided, however, that Buyer shall not be responsible for any loss, damage, or injury to the extent that such loss, damage, or injury arises out of the negligence or willful misconduct of Seller or Seller's Associated Parties.

9.02 Indemnification.

(a) By Seller. Seller shall defend, indemnify and hold harmless Buyer and Buyer's Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Buyer, Seller, or others, or arising out of an action or omission of Seller or any of Seller's Associated Parties, (i) resulting from or attributable to the negligence or willful misconduct of Seller or any of Seller's Associated Parties, (ii) resulting from or attributable to the breach of any of Seller's representations or warranties contained herein, or (iii) resulting from, arising out of, or in any way connected with the performance of, or failure to perform, Seller's obligations under this Agreement or the construction, ownership or leasing, operation or maintenance of the Solar Energy Facility, including the delivery of Energy to the Delivery Point, excepting, in each case, any Indemnifiable Cost to the extent it is caused by the negligence or willful misconduct of Buyer or Buyer's Associated Parties. Seller shall protect, indemnify and hold harmless Buyer from any claims of Seller's creditors to any right, title or interest in the Facility Site, Energy, or Environmental Attributes.

(b) By Buyer. To the extent allowed by Law, Buyer shall defend, indemnify and hold harmless Seller and Seller's Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Seller, Buyer, or others, or arising out of an action or omission of Buyer or any Buyer's Associated Parties (i) resulting from or attributable to the negligence or willful misconduct of Buyer or any of Buyer's Associated Parties, (ii) resulting from or attributable to the breach of any of Buyer's representations or warranties contained herein, or (iii) resulting from, arising out of, or in any way connected with the performance of, or failure to perform, Buyer's obligations under this Agreement or the construction, ownership, operation or maintenance of any property of Buyer or Buyer's Associated Parties on Buyer's side of the Delivery Point, including the receipt of Energy at the Delivery Point, excepting in each case any Indemnifiable Cost to the extent it is caused by the negligence or willful misconduct of Seller or Seller's Associated Parties. Buyer shall protect, indemnify and hold harmless Seller from any claims of Buyer's creditors to any right, title or interest in the Solar Energy Facility. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to waive any defense of Governmental Immunity available to Buyer under Iowa Code chapter 670 as it now exists or may be amended from time-to-time. "Governmental Immunity" as used herein shall include all defenses available to Buyer under Iowa Code chapter 670. Nothing in this Agreement shall be construed to waive any other source of sovereign immunity or similar exemption from or limitation on liability available to Buyer.

(c) By Buyer and Seller. If, due to the joint, concurring, comparative or contributory negligence or willful misconduct of the Parties or their Associated Parties, either Party incurs any indemnifiable Cost arising out of any claim, such Indemnifiable Cost shall be allocated between Seller and Buyer in proportion to their respective degrees of negligence or willful misconduct contributing to such claim.

(d) Employees. Neither Party nor such Party's Associated Parties shall be deemed an employee of the other Party. Neither Party shall bring any claim against the other Party or any of such Party's Associated Parties with respect to any liability for compensation under any applicable state or federal Worker's Compensation Act, including Worker's Compensation and/or employer's liability claims of employees. Each Party shall be liable for all claims of the Party's own employees arising out of any provision of any Workers' Compensation Law.

(e) Notice and Participation.

(i) If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Article from the other Party (the "Indemnifying Party") with respect to any claim, the Indemnified Party shall give the Indemnifying Party notice of such claim. The Indemnifying Party shall have no liability under this Article for any claim for which such notice is not provided, but only to the extent that the failure to give such notice materially impairs the ability of the Indemnifying Party to respond to or to defend the claim.

(ii) The Indemnifying Party shall have the right to assume the defense of any claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel, at the Indemnifying Party's expense, to assert such legal defenses and to otherwise participate in the defense of such claim on behalf of such Indemnified Party, and the Indemnifying Party shall be responsible for the reasonable fees and expenses of such separate counsel.

(iii) Should any Indemnified Party be entitled to indemnification under this Section as a result of a claim by a third party, and should the Indemnifying Party fail to assume the defense of such claim within a reasonable period of time, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party), settle such claim.

(iv) Except to the extent expressly provided herein, no Indemnified Party shall settle any claim with respect to which it has sought or is entitled to seek indemnification pursuant to this Section unless (i) it has obtained the prior written consent of the Indemnifying Party, or (ii) the Indemnifying Party has failed to provide, within a reasonable period of time, security, in a form reasonably satisfactory to the Indemnified Party, securing the payment of any Indemnifiable Cost, up to the amount of the proposed settlement.

(v) Except to the extent expressly provided otherwise herein, no Indemnifying Party shall settle any claim with respect to which it may be liable to provide indemnification pursuant to this Section without the prior written consent of the

Indemnified Party, provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such claim, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's reasonable out-of-pocket legal fees and other costs related to the defense of the claim paid or incurred prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the claim, or portion thereof, that is the subject of such settlement agreement.

(f) Net Amount. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Indemnifiable Cost, net of any insurance or other recovery actually received by the Indemnified Party.

(g) Assertion of claims. No claim of any kind shall be asserted against either Party or such Party's Associated Parties, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, unless it is filed in a court of competent jurisdiction, or a demand for arbitration is made, within the applicable statute of limitations period for such claim.

(h) No Release of Insurers. The provisions of this Article shall not be deemed or construed to release any insurer from its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

(i) Survival of Obligation. The duty to indemnify under this Article shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any Indemnifiable Cost arising out of an event or condition which occurred or existed prior to such expiration or termination.

9.03 Limitation of Liability. For breach of any provision of this Agreement for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive exemplary or indirect damages, by statute, in tort or contract or otherwise (except to the extent that an Indemnifying Party is obligated under Section 9.02 to indemnify against third party claims for consequential, incidental, punitive, exemplary or indirect damages or lost profits or business interruption damages). The limitations herein imposed on remedies and the measure of damages is without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.

## ARTICLE X
## EVENTS OF DEFAULT AND REMEDIES

10.01 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

(a) Buyer breaches or fails to observe or perform any of Buyer's material obligations under this Agreement, unless within thirty (30) days after written notice from Seller specifying the nature of such breach or failure, Buyer either cures such breach or failure or, if such cure cannot reasonably be effected by the payment of money and cannot be completed within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(b) Buyer fails to make any undisputed payment due under the Agreement within ten (10) days after such payment is due and fails to cure such failure within twenty (20) days after written notice from Seller.

(c) Buyer carries out any Buyer transactions prohibited by Article VII without the written approval of Seller.

(d) Buyer commences a proceeding or case in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Buyer, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Buyer or of all or any substantial part of its assets, or (iii) similar relief in respect of Buyer under any Bankruptcy Law.

(e) A proceeding or case is commenced, without the application or consent of Buyer, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Buyer, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Buyer or of all or any substantial part of its assets, or (iii) similar relief in respect of Buyer under any Bankruptcy Law, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days from commencement of such proceeding or case or the date of such order, judgment or decree.

(f) The Interconnection Provider shall default in the performance of any material obligation under the Interconnection Agreement and such default shall continue beyond the cure period provided therein.

10.02 Events of Default by Seller. The following shall each constitute an Event of Default by the Seller:

(a) Seller breaches or fails to observe or perform any of Seller's material obligations under this Agreement or that certain lease agreement between Buyer and Seller for the premises upon which the Solar Energy Facility will be located (the "Facility Lease"), unless within thirty (30) days after written notice from Buyer specifying the nature of such breach or failure, Seller either cures such breach or failure or, if such cure cannot reasonably be effected by the payment of money and cannot be completed within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(b) Seller is dissolved, Seller's existence is terminated or its business is discontinued, or Seller or substantially all of its assets are conveyed for purposes other than financing, unless this Agreement is assigned to a successor pursuant to Article VII, or unless a majority of the owners of Seller elect to continue the business of Seller under a successor company, and such company notifies Buyer of its intention to assume Seller's obligations under this Agreement within thirty (30) days after such dissolution, termination or discontinuation.

(c) Seller fails to make any undisputed payment due under the Agreement within ten (10) days after such payment is due and fails to cure such failure within twenty (20) days after written notice from Buyer.

(d) Seller carries out any of the Seller transactions prohibited by Article VII without the written approval of Buyer.

(e) Seller defaults in the performance of any material obligation under the Facility Lease or the Interconnection Agreement and such default shall continue beyond the cure period provided therein.

(f) Seller commences a proceeding or case in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Seller, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Seller or of all or any substantial part of its assets, or (iii) similar relief in respect of Seller under any Bankruptcy Law.

(g) A proceeding or case is commenced, without the application or consent of Seller, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Seller, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Seller or of all or any substantial part of its assets, or (iii) similar relief in respect of Seller under any Bankruptcy Law, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days from commencement of such proceeding or case or the date of such order, judgment or decree.

10.03 Remedies. If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have, in addition to all rights and remedies available at law and equity, the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts then owing between the Parties and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If Buyer is the Defaulting Party, Seller may collect the sum of amounts that would have been due to Seller had Seller delivered Energy at the Energy Price to Buyer in the amounts in Exhibit 2 through the end of the Contract Term, less the amount received or which should have been received by Seller for sale of the Energy to another buyer, it being understood and agreed that

Seller has a duty to mitigate damages and shall make commercially reasonable efforts to sell the Energy to another Buyer and at a commercially reasonable price. If Seller is the Defaulting Party, Buyer's remedy for Seller's failure to deliver Energy is Buyer's actual damages resulting from locating, procuring and purchasing a replacement Energy supply and the delivery thereof.

10.04 Dispute Resolutions.

(a) General Provision. Every dispute of any kind or nature between the Parties arising out of or in connection with this Agreement (each a "Dispute") shall be resolved in accordance with this Section, to the extent permitted by Law.

(b) Referral to Senior Management.

(i) Upon the occurrence of a Dispute, either Party may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the thirty (30) day period following the date of the notice. Any such notice shall be delivered within a reasonable time after the Dispute arises, but in no event shall it be delivered less than thirty (30) days before the institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.

(ii) Within seven (7) Business Days after receipt of a notice pursuant to Paragraph (i), the other Party shall provide a notice to the requesting Party indicating the names of the Senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the thirty (30) day period following the date of the notice.

(iii) During the remainder of the thirty (30) day period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to resolve the Dispute. Unless the Parties agree otherwise in writing prior to the commencement of such thirty (30) day period, neither Party shall be entitled to invoke or rely on any admissions, settlement offers or other statements made during the course of such discussions in any subsequent arbitration or legal proceedings.

(c) Litigation. Any Dispute that has not been resolved exclusively within thirty (30) days after the delivery of a notice in accordance with Section 10.04(b)(iii) shall be resolved by litigation in the trial court for the State in which the Solar Energy Facility is located having jurisdiction over the Solar Energy Facility location.

(d) Continued Performance. During the conduct of Dispute resolution procedures pursuant to this Section, except during any litigation, (i) the Parties shall continue to perform their respective obligations under this Agreement, and (ii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed to prevent Seller from suspending performance if Buyer has not paid undisputed amounts due and owing to Seller under this Agreement.

10.05 Effect of Termination. No early termination of this Agreement under Section 10.03 following an Event of Default shall relieve the Defaulting Party of its liability and obligations hereunder, and the Non-Defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement, and the rights given hereunder shall be in addition to all other remedies available to the Parties, either, at law, in equity, or otherwise, for the breach of this Agreement, provided, however, that any damages for the termination of this Agreement shall be as provided in Section 10.03.

## ARTICLE XI
## INSURANCE

11.01 Coverage and Amounts. Seller, and all contractors and subcontractors performing any services in connection with the construction, operation or maintenance of the Solar Energy Facility, shall obtain and maintain in force comprehensive general liability insurance, public liability coverage and property insurance for injury to persons and property, automobile liability insurance and workman's compensation insurance, all in amounts and under terms which are generally carried by owners, operators or maintainers of projects similar to the Solar Energy Facility. If any insured Party reasonably determines that any such policy of insurance is no longer available at commercially reasonable rates, such insured Party may use it's commercially reasonable efforts to obtain substitute insurance which is as nearly identical as possible to the policy of insurance which it is intended to replace. Seller shall notify Buyer of any such substitution at least fifteen (15) days before it takes effect.

11.02 Additional Insureds. The insurance policies other than the workman's compensation policy shall name Buyer as an additional insured. Before commencing any deliveries under this Agreement, Seller shall deliver to Buyer, and require its contractors, subcontractors and agents to deliver to Buyer, in accordance with this Article 11, an insurance certificate evidencing the required coverage, limits and additional insured provisions as required by this Agreement. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer, insurance coverage shall be primary and non-contributory, and provide 15 days advance written notice to Buyer prior to anniversary date of cancellation or any material change in coverage or condition. A copy of the cancellation clause endorsement as noted above shall be attached to the insurance certificate.

## ARTICLE XII
## MISCELLANEOUS

12.01 Governing Law. This Agreement is executed in accordance with and is intended to be construed and governed under the Laws of the State of Iowa, excluding any Law related to conflict or choice of Law which would result in the application of any Law to this Agreement other than the Laws of the State of Iowa. Venue for any disputes regarding this Agreement shall lie in the trial court for the county or judicial district in which the Solar Energy Facility is located, as appropriate under applicable Law.

12.02 Notice and Service. Any notice, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by personal service, Federal Express or comparable overnight delivery service, addressed to the Party to be notified at the address(es) set forth in Exhibit 4. Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address(s) by either Party shall be made in writing no later than ten (10) Business Days prior to the effective date of such change.

12.03 Amendment. No amendment or modification of the terms of this Agreement shall be binding on either Buyer or Seller unless such amendment is reduced to writing and signed by both Parties.

12.04 Expenses. Except as specifically set forth in this Agreement, Buyer shall be responsible for Buyer's expenses related to the performance of its obligations under this Agreement, and Seller shall be responsible for Seller's expenses related to the performance of its obligations under this Agreement.

12.05 Taxes and Other Charges.

(a) Seller's Taxes. Seller shall be solely responsible for any Tax relating to the ownership or leasing, operation or maintenance of the Solar Energy Facility or its components or appurtenances, provided, Seller shall not be responsible for any sales, excise, gross receipts or other Tax, not measured by Seller's net income, imposed with respect to the sale or the purchase of Energy hereunder;

(b) Buyer's Taxes. Buyer shall be solely responsible for any Tax imposed with respect to the sale or the purchase of Energy. Seller shall be solely responsible for any Tax imposed with respect to the Solar Energy Facility or the Energy produced thereby which is not the responsibility of Seller under Section 12.05(a).

12.06 Maintenance of Records. Both Seller and Buyer shall keep a record of all invoices, receipts, charts, computer printouts, punchcards or magnetic tapes related to the volume or price of sales of Energy made under this Agreement. Such records shall be made available for inspection by either Party from time to time upon reasonable notice at the principal place of business of the non-requesting Party during regular business hours. All such materials, excluding Energy Price, volume and information required to be disclosed by Law, shall be deemed to be proprietary information, and shall be kept on record for a minimum of two (2) years from the date of their preparation.

12.07 No Partnership. Notwithstanding any provision of this Agreement, Seller and Buyer do not intend to create hereby any lease, joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.08 No Duty to Third Parties. Except as provided in Article VII, this Agreement is for the sole benefit of the Parties hereto, and nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a party to this Agreement. Except as specifically provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except Buyer and Seller. Except as provided in Article VII, the Parties specifically disclaim any intent to create any rights in any Person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.

12.09 Dedication. No undertaking by one Party to the other under this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

12.10 Information. Each Party shall make available to the other such other information relative to the Solar Energy Facility as may be reasonably required to carry out the terms of this Agreement.

12.11 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.12 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, or if any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, invalid, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof; provided, however, that Seller and Buyer shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, invalid, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, invalid, void, or contrary to Law.

12.13 Intentionally Omitted.

12.14 Successors and Assigns. Except to the extent otherwise indicated herein, all the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

12.15 Integration. There are no understandings between the Parties as to the subject matter of this Agreement other than as set forth herein, in that certain Interconnection

Agreement, and in that certain Lease and Easement Agreement for Solar Energy System. Those three agreements represent the entire understanding between the Parties in relation to the subject matter hereof. These three agreements supersede any and all previous agreements, arrangements or discussions between the Parties (whether written or oral) in respect of the subject matter hereof, all of which are hereby abrogated and withdrawn.

12.16 Survival. The applicable provisions of this Agreement shall continue in effect after the expiration of the Contract Term, to the extent necessary to provide for final billing and adjustment, and to make other appropriate settlements hereunder.

12.17 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

12.18 Physical Settlement Intended. The Parties acknowledge and agree that the primary intent of this Agreement is for physical settlement of the commodity to be purchased and sold hereunder (i.e., to transfer ownership of the commodity and not to transfer solely its price risk), and that any option or optionality under this Agreement (a) is incidental to the primary purpose for entering into the Agreement and (b) cannot be severed and marketed separately from the Agreement. It is the intent of the Parties that this Agreement is not a "swap," as such term is defined in the Commodity Exchange Act and the Commodity Futures Trading Commission regulations and interpretations issued thereunder (the "CFTC rules"), or that this Agreement is generally exempt from requirements of the CFTC rules under CFTC Rule 32.3 (the "Trade Option Exemption") except those rules related to reporting and recordkeeping requirements, as applicable. Accordingly, each Party represents and warrants to the other as follows:

(a) With respect to the commodity to be purchased and sold hereunder, it is a commercial market participant and a commercial entity as such terms are used in the CFTC rules, and it is a producer, processor, or commercial user of, or a merchant handling the commodity, and it is entering into this Agreement for purposes related to its business as such.

(b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant.

(c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder.

(d) With respect to the commodity to be purchased and sold hereunder, it intends to make or take physical delivery of the commodity.

(e) With respect to any embedded volumetric optionality in this Agreement, such optionality is primarily intended, at the time that the parties enter into this Agreement, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the commodity to be purchased and sold hereunder.

(f) With respect to any embedded optionality or commodity option in this Agreement, such option is intended to be physically settled, so that, if exercised, the option would result in the sale of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery.

(g) The commodity to be purchased and sold hereunder is a nonfinancial commodity, and is also an exempt commodity or an agricultural commodity, as such terms are defined and interpreted in the CFTC rules.

12.19 Nondiscrimination Clause. In accordance with applicable law, Seller agrees that neither it nor any of its subcontractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment because of the race, color, religion, sex, disability or national origin of the employee or applicant.

12.20 Applicable Law. The Parties understand and agree that this Agreement and the operations hereunder are subject to all applicable laws, ordinances, orders, rules and regulations of any governmental entity, regional transmission organization, or Transmission Authority having or asserting jurisdiction (such as the Federal Energy Regulatory Commission (FERC), Southwest Power Pool, Midcontinent Independent System Operator, Western Area Power Administration), and the terms and conditions stated herein are subject to modifications resulting from changes in any such laws, ordinances, orders, rules or regulations. In addition, if the third party-owned transmission service provider providing network transmission integration service for Buyer’s load has not transferred functional control to a regional transmission organization or independent system operator, the Parties agree to work together in good faith to make necessary or desired changes to the terms and conditions of this Agreement to honor the intent of this Agreement in the event the such transmission service provider joins a regional transmission organization or independent system operator or otherwise transfers functional control to another entity. Notwithstanding the foregoing, no such changes shall affect or modify the Energy Price unless such change is set forth in an amendment to this Agreement and signed by authorized representatives of both Parties.

**[The Remainder of This Page Intentionally Blank]**

**IN WITNESS WHEREOF**, the Parties have caused the signatures of their authorized officers and their seals to be affixed as of the day and year first above written.

**BUYER:**

**INDIANOLA MUNICIPAL UTILITIES**

By: _______________________________________________
Lori Smith, Board Chair

**SELLER:**

**SE MUNICIPAL IOWA, LLC**
a Nebraska limited liability company

By: ___________________________________
Eric G. Johnson, President

## EXHIBIT 1

**<u>Parties, Description of the Solar Energy Facility, Additional Definitions, and Supplemental Information</u>**

The Effective Date of this Agreement shall be this ____ day of ____________, 20____

The Parties to this Agreement are: Indianola Municipal Utilities, for and on behalf of the City of Indianola, Iowa ("Buyer"), and SE Municipal Iowa, LLC ("Seller"). Buyer is a political subdivision and municipal corporation duly organized and validly existing and in good standing under the Laws of the State of Iowa. Seller is a limited liability company duly organized and validly existing under the Laws of the State of Nebraska.

The solar energy conversion facility Seller proposes to construct, own, operate and maintain for the purpose of producing electric energy for sale (the "Solar Energy Facility") is a 4.09 MW AC solar electric generating facility in Indianola, Iowa. Notwithstanding the foregoing, solar energy technologies are improving at a rapid rate and it is possible that Seller may replace from time to time all or part of the Solar Energy Facility, with newer model or design, in Seller's sole discretion and at Seller's sole cost and expense. Any such replacement shall not require Buyer to purchase more energy than the amount this Agreement requires unless Seller and Buyer agree otherwise in writing.

"Committed Capacity" shall mean 4090 kW DC. Committed Capacity shall not increase and shall not change more than two percent (2%) down without Buyer's written agreement.

"Contract Term" shall mean the period commencing on the Effective Date and ending at 12:59:59 p.m. on the date which is twenty-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs, and shall also include any Extended Contract Term(s) pursuant to Section 3.01 of this Agreement, if applicable, or such earlier date when this Agreement may be terminated in accordance with the terms hereof.

"Distribution System" shall mean the electric system facilities which are leased, owned or operated by Buyer and which are rated at a voltage level of 2.4kV volts and above, but less than 35kV volts. The Distribution System facilities serving Indianola Municipal Utilities are rated at 13200Y/7620 volts. The Distribution System is connected to the broader electrical grid through MidAmerican Energy Company's transmission system (the "Transmission System").

"Guaranteed Commercial Operations Date" shall mean December 31, 2024; provided, however, that the Guaranteed Commercial Operations Date shall be extended on a day-for-day basis, or such longer time as may be necessary under the circumstances, for any delay in achieving the Commercial Operations Date due to an Excused Delay.

"Guaranteed Energy Production" for any Measurement Period shall mean ninety percent (90%) of the Target Energy Production (as defined in Exhibit 2) for such Measurement Period.

"Interconnection Provider" shall mean Indianola Municipal Utilities, for and on behalf of the City of Indianola, Iowa, or any successor pursuant to the terms of the Interconnection Agreement.

The price for Energy and Environmental Attributes the Solar Energy Facility produces that is delivered by Seller to the Delivery Point, and for Lost Production, shall be Thirty-Nine Dollars and Ninety Cents per megawatt hour ($39.90/MWh) (the "Energy Price"). The Energy Price shall be escalated by one-half of one percent (0.5%) on the first January 1 after the Commercial Operations Date occurs, and on each anniversary thereof during the Contract Term. The Energy Price shall be payable by Buyer monthly in arrears.

Energy delivered by Seller to Buyer shall be measured by a meter located at the Delivery Point (the "Delivery Meter"), and shall have the metering instrument transformer, which measures the output of the Solar Energy Facility, located on the secondary side of the step-up transformer for the Solar Energy Facility.

## EXHIBIT 2

## Target Energy Production

(The chart below will be updated after the Commercial Operations Date based on the final Committed Capacity of the System as set forth in Exhibit 1, provided that any adjustment that is not a pro rata adjustment shall require the agreement of the Parties.)

| Measurement Period | Target Energy Production (MWh per year) |
|---|---|
| Year 1 & 2 | 6,476 |
| Year 3 & 4 | 6,386 |
| Year 5 & 6 | 6,297 |
| Year 7 & 8 | 6,209 |
| Year 9 & 10 | 6,123 |
| Year 11 & 12 | 6,037 |
| Year 13 & 14 | 5,953 |
| Year 15 & 16 | 5,870 |
| Year 17 & 18 | 5,788 |
| Year 19 & 20 | 5,707 |
| Year 21 & 22 | 5,628 |
| Year 23 & 24 | 5,549 |
| Year 25 through 35 | 5,472 |

## EXHIBIT 3

**Form of Attestation of Energy Production**

Pursuant to Section 5.02(e) of the Solar Power Purchase Agreement (the "Agreement"), dated _______________, between Indianola Municipal Utilities, for and on behalf of the City of Indianola, Iowa ("Buyer"), and SE Municipal Iowa, LLC ("Seller"). Seller hereby attests and certifies that the below listed solar Energy was produced by the Solar Energy Facility and delivered to the Indianola Municipal Utilities distribution system on or about the date identified and that Seller has not transferred to any person other than _______________ any of the Environmental Attributes associated with such Energy. Capitalized terms not herein defined have the meaning ascribed thereto in the Agreement.

Solar Energy Facility name and location: Indianola Municipal Utilities Solar, Indianola, IA
Solar Energy Facility ID#: ______________________________________
Energy Source: Photovoltaic
Capacity (MW): 4.02
Commercial Operations Date: ______________________________________

Solar Generator Identification Number: __________________

| Dates | MWh generated |
|---|---|
| __________ | _____________ |
| __________ | _____________ |
| __________ | _____________ |
| __________ | _____________ |
| __________ | _____________ |
| __________ | _____________ |

Seller further attests, warrants, and represents as follows:

i) The information provided herein is true and correct; and

ii) The Indianola Municipal Utilities Solar electric generating facility generated and delivered to the Indianola Municipal Utilities distribution system the solar Energy in the amount indicated as undifferentiated Energy.

**SE MUNICIPAL IOWA, LLC**
a Nebraska limited liability company

By: ________________________________
Eric G. Johnson, President

Date: ______________________________

**EXHIBIT 4**

**Addresses for Delivery Notices and Billing**

Notices:

Any notices or demand under or required by this Agreement shall be in writing and shall be deemed properly given when (i) mailed by United States registered or certified mail, postage prepaid, return requested, addressed as follows:

If to Buyer: Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Copy to: ________________________________
________________________________
________________________________
________________________________

If to Seller: SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

Billing and Payments:
Buyer: e-mail per 4.03(b): clonger@indianolaiowa.gov
________________________________________
________________________________
Wire transfer per 4.04(a)(iv): ______
________________________________

Seller: ________________________________
________________________________
________________________________



DOCS/2859912.1

# EXHIBIT 5

## Form of Consent and Acknowledgement

## CONSENT AND ACKNOWLEDGMENT

This Consent and Acknowledgment, dated as of _____________, 20___ (this "Acknowledgment"), is made by Indianola Municipal Utilities, organized and existing under the Laws of the State of Iowa (the "Buyer"), for the benefit of SE Municipal Iowa, LLC (the "Seller"), and _______, as collateral agent (together with its successors and assigns, the "Collateral Agent") for the financing institutions providing loans and other financial accommodations with respect to the Systems (as defined below).

The Buyer and Seller have entered into the Solar Power Purchase Agreement specified on the attached Annex 1 (the "PPA") with respect to the photovoltaic solar power system (the "System") located at the site described in such Annex 1.

The Seller has collaterally assigned or intends to collaterally assign, and has granted or intends to grant a security interest in, the PPA to the Collateral Agent to secure the obligations of the Seller and its affiliates under the financing and participation agreement (and related agreements and instruments) between the financial institutions for which the Collateral Agent acts as agent, pursuant to which agreement (and related agreements and instruments) such financial institutions are providing financial accommodations to the Seller and such affiliates in connection with, inter alia, the System (the "Financing Documents").

Capitalized terms used but not otherwise defined in this Acknowledgment have the meanings given to them in the PPA.

1. Acknowledgment and Consent.

a) The Buyer acknowledges and consents to the collateral assignment by the Seller to the Collateral Agent of, and grant by the Seller to the Collateral Agent of a security interest in, all of Seller's right, title and interest in, to and under the PPA for the System as stated in the Financing Documents.

b) The Buyer acknowledges that, during the continuance of an event of default under the Financing Documents (as notified to the Buyer by the Collateral Agent), the Collateral Agent will have the right to foreclose upon or otherwise acquire and succeed to all of the Seller's right, title and interest in, to and under the PPA, including the right to continue to perform in place of the Seller, the right to require the Buyer to continue to perform under the PPA for the benefit of the Collateral Agent or its successors or assignees (as the new "Seller" under such PPA), to the extent those rights are contained in the Financing Documents and the right to rely upon all representations, warranties, indemnities and agreements made by the Buyer under the PPA.

c) Until further written notice from the Collateral Agent to the Buyer, the Buyer agrees to pay any and all amounts payable to the Seller under the PPA, including without limitation payments for energy purchased under the PPA, payments of any indemnities, or termination payments that may at any time become payable under or in respect of the PPA, to the Collateral Agent, by remitting such payments to the account specified on the attached Schedule 1.

d) The Buyer accepts that the Collateral Agent is a "Financing Party" as defined in and for the purposes of the PPA.

2. <u>Rights of Collateral Agent</u>. Notwithstanding anything to the contrary in the PPA:

a) The Collateral Agent, as collateral assignee, shall be entitled to exercise, in the place and stead of the Seller, any and all rights and remedies of the Seller under the PPA in accordance with the terms thereof.

b) The Collateral Agent shall have the right, but not the obligation, to pay all sums due under the PPA and to perform any other act, duty or obligation required of the Seller thereunder or cause to be cured any default of the Seller thereunder provided the Collateral Agent does not take possession of the System. The Buyer acknowledges and agrees that the Collateral Agent has not assumed and does not have any obligation or liability under the PPA, and that the exercise by the Collateral Agent of its rights or remedies under the Financing Documents shall not constitute an assumption of Seller's obligations under the PPA, except to the extent any such obligations are expressly assumed by the Collateral Agent or its designee pursuant to an instrument in writing unless the Collateral Agent takes possession of the System.

c) If the Buyer becomes entitled to terminate the PPA due to an uncured default thereunder by the Seller, the Buyer agrees not to terminate the PPA without first giving written notice of such uncured default to the Collateral Agent and giving the Collateral Agent the same cure period afforded to the Seller under the PPA, plus an additional period of thirty (30) days, to permit the Collateral Agent to cause such default to be cured. The Buyer understands that in order to cure certain defaults by Seller under the PPA the Collateral Agent may need to have possession of the System or related assets, and accordingly the Buyer agrees that if the Collateral Agent diligently seeks such possession, whether by foreclosure proceedings or a court action (such as, for example, seeking the appointment of a receiver of the Seller's property), the Collateral Agent's additional 30-day cure period shall be extended for 30 days more to obtain such possession.

d) The Buyer agrees that it will promptly notify the Collateral Agent of any breach or default by Seller under the PPA at the notice address for the Collateral Agent listed on the attached Schedule 2 (or at such other address for notices as the Collateral Agent may specify in writing to the Buyer).

3. Confirmation. The Buyer confirms the following matters for the benefit of Seller and the Collateral Agent with respect to the System: [Note: If any statement below is not true at time of signing, Buyer will so state in the execution version and indicate the reason a statement is not true at such time.]

a) To the Buyer's knowledge, no Event of Default by the Seller exists under the PPA, and, to the Buyer's knowledge, no breach or default by the Seller has occurred thereunder that would, with the giving of notice or lapse of time, constitute an Event of Default by the Seller.

b) No Event of Default by the Buyer exists under the PPA, and no breach or default by the Buyer has occurred thereunder that would, with the giving of notice or lapse of time, constitute an Event of Default by the Buyer.

c) The PPA is in full force and effect and has not been amended since the date of that agreement, except as specifically stated in the attached Annex 1; and there are no other agreements or representations of any kind between the Buyer and Seller as to the subject matter of the PPA.

d) The Buyer agrees that the Solar Energy Facility has achieved Commercial Operation and that the Commercial Operations Date has occurred.

e) All conditions precedent for the required performance of its obligations under the PPA have either been met or have been waived, and that Buyer has not received any written termination notice from the Seller due to any conditions to Seller's obligations set forth in Section 3.02(b) of the PPA not having been satisfied nor waived.

No termination, amendment, variation, waiver or other supplement of any provision of this Acknowledgement shall be effective unless in writing and signed by the Buyer, the Seller and the Collateral Agent.

The Buyer hereby represents and warrants that it has the full power, authority and legal right to execute, deliver and perform this Acknowledgment.

This Acknowledgment has been duly executed and delivered by each of the Buyer and the Seller, and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Acknowledgment as of the date first above written.

**BUYER:**

**INDIANOLA MUNICIPAL UTILITIES**

By: ______________________________________________
Lori Smith, Board Chair

**SELLER:**

**SE MUNICIPAL IOWA, LLC**
a Nebraska limited liability company

By: ________________________________
Eric G. Johnson, President

**ANNEX 1**
**to Consent and Acknowledgment**

**Systems**

Power Purchase Agreement:

## SCHEDULE 1
## Account Information

(To be provided by Seller prior to COD)

Bank:

Account Name:

Account #:

ABA #:

**SCHEDULE 2**

**Addresses for Notices**

If to Collateral Agent:

_________________________________
_________________________________
_________________________________
_________________________________

If to Seller:

SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

If to Buyer:

Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Copy to:

_________________________________
_________________________________
_________________________________
_________________________________

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Consideration of the approval of a lease and easement agreement for solar energy system.

---

**Recommendation:** Simple motion is in order.

**Attachments:**
1. #2852805 v2 SE Municipal Iowa - Indianola, IA Lease
2. Redlined Indianola Lease

# LEASE AND EASEMENT AGREEMENT
# FOR SOLAR ENERGY SYSTEM

# LEASE AND EASEMENT AGREEMENT FOR SOLAR ENERGY SYSTEM

**This Lease and Easement Agreement for Solar Energy System** (this "**Lease**") is entered into to be effective as of the date fully executed by all parties hereto ("**Effective Date**") by and between **Indianola Municipal Utilities** ("**Lessor**") and **SE Municipal Iowa, LLC**, a Nebraska limited liability company ("**Lessee**"). Lessee and Lessor are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

## BACKGROUND

A. Lessor is the owner of fee title to that real property located in Warren County, Iowa, described and identified in Exhibit "1-A" attached hereto and incorporated herein by this reference ("**Real Property**").

B. Lessee desires to lease all or part of the Real Property (such leased portion being referred to as the "**Leased Premises**") for the location and operations of solar energy generation and transmission and related facilities thereon ("**Solar Operations**") and Lessor desires to lease the Leased Premises to Lessee for that use; provided that the Parties agree that the Leased Premises shall not encompass any area within twelve (12) feet of any above ground or underground infrastructure, improvements, or facilities of Lessor located on the Real Property or adjacent thereto, which existed as of the Effective Date.

C. Lessor further desires to grant Lessee, and Lessee desires to accept from Lessor, various easements over, under and across the Leased Premises in relation to the Solar Operations.

**NOW THEREFORE,** for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Grant of Lease**. Lessor does hereby grant to Lessee, and Lessee does hereby accept, a lease for exclusive use by Lessee of the Leased Premises, on the terms and conditions hereinafter set forth.

2. **Use of Leased Premises by Lessee**.

2.1 Permitted Uses. This Lease is for use of the Leased Premises for solar energy collection and conversion, for generation and transmission of electric power and for all reasonably related and incidental purposes and activities (collectively, "**Operations**"), in accordance with all of the terms of this Lease, with Lessee deriving all profit therefrom, and including, without limitation:

(a) conducting studies of solar radiation, solar energy, soils, and other meteorological and geotechnical data;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic electric energy generation, including without limitation, existing and/or future technologies used or useful in connection with photovoltaic energy conversion and generation of electricity from sunlight, and associated support structure, braces, wiring, plumbing, and related equipment ("**Solar Energy Facilities**"), (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, cross-arms, guy lines, anchors, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) interconnection and/or switching facilities and electric transformers and transformer pads, (v) energy storage facilities, (vi) meteorological towers and solar energy measurement equipment, (vii) control buildings, control boxes and computer monitoring hardware, (viii) utility installation, (ix) safety protection facilities, (x) maintenance yards, (xi) roads and erosion control facilities, (xii) signs and fences, and (xiii) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity generated on the Leased Premises (all of the foregoing, including the Solar Energy Facilities, collectively the "**Improvements**");

(c) subject to Section 3.1 and Section 20.2 herein, and only to the extent such rights are vested in Lessor as the owner of the Real Property, (i) reasonably removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant or other vegetation; (ii) reasonably dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence or other object constructed subsequent to the Effective Date of this Lease, on or that intrudes (or upon maturity could intrude) into the Leased Premises that could obstruct, interfere with or impair the Improvements or the use of the Leased Premises intended by Lessee hereunder; (iii) excavating, grading, leveling and otherwise modifying the land; and (iv) undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes. Notwithstanding the foregoing, if Lessee uses chemicals to control vegetation on an area of the Leased Premises that is close in proximity to a water source, Lessor may, upon written notice to Lessee, prohibit the use of chemicals that pose a risk of contaminating the water source.

2.2 Additional Uses. The Parties acknowledge and agree that solar energy technologies are improving at a rapid rate and that it is probable that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Leased Premises, entirely or in part, with newer model or design Solar Energy Facilities, in Lessee's sole discretion and at Lessee's sole cost and expense. Any such replacements undertaken by Lessee shall not act to (i) modify or extend the Term of this Lease, (ii) modify the terms or any obligations of the Parties under the PPA, or (iii) otherwise alter the rights and obligations of the Parties under this Lease.

2.3 Exclusive Use. Lessee shall have the sole and exclusive right to collect and convert all of the solar resources of, and to conduct Operations on, the Leased Premises. Lessor shall not grant any rights in the Leased Premises purporting to permit others to conduct Operations or any activity or use that may interfere with the Lessee's Operations on the Leased Premises in derogation of Lessee's sole and exclusive rights on the Leased Premises. For as long as the PPA is in effect, the output of the Solar Energy Facilities on the Leased Premises shall be sold exclusively to Lessor under the PPA, it being agreed that the sales to Lessor under the PPA are part of the consideration for this Lease and without the PPA Lessor would not enter into this Lease.

2.4 Leased Premises; Alteration of Boundaries. Prior to constructing any permanently-affixed Improvements, Lessee shall obtain a survey of the Real Property, or portion thereof for which Lessee desires to utilize as the Leased Premises, and shall provide Lessor with a copy of the same. Subject to alterations by Lessor as provided below, the boundaries provided on the survey shall thenceforth constitute the Leased Premises and shall automatically be incorporated herein as Exhibit "1-B", attached hereto. Any portions of the Real Property not included within the boundaries of the Leased Premises shown on the survey shall be released from the terms and obligations of this Lease. Upon Lessor's receipt of the survey, Lessor shall have thirty (30) days to identify, via written notice to Lessee, a specific area (or areas) of the Real Property for which Lessor wishes to exclude from the Leased Premises due to Lessor's utilization of the same for a use that existed prior to the full execution of this Lease. If Lessor provides such notice within the time period prescribed above, and subject to the limitations set forth below, Lessee shall plot the revised boundaries of the Leased Premises on the survey to reflect the exclusion of the of the area(s) identified by Lessor, and such revised boundaries shall thereafter constitute the Leased Premises and shall automatically be incorporated herein as Exhibit "1-B", attached hereto. Notwithstanding the foregoing, under no circumstances shall the areas excluded from the Real Property result in: (i) a reduction of the area of the Leased Premises to less than what is required for Lessee's intended Operations related to the generation of solar energy; (ii) a reduction in the Solar Energy Facilities' ability to generate solar energy; (iii) a material increase in the costs of Lessee's Operations; or (iv) an increase in the commercial risks or regulatory barriers related to Lessee's Operations. If Lessee determines, in its sole and reasonable discretion, that Lessor's requested exclusions is likely to result in one or more of the above prohibited factors, Lessee shall only be obligated to revise the boundaries of the Leased Premises to the extent that such revisions are unlikely to result in the occurrence of the above factors. Unless and until the boundaries of the Leased Premises are revised pursuant to the terms of this Section 2.4, all of the Real Property shall constitute the Leased Premises. If Lessor fails to timely request alteration of the boundaries of the Leased Premises pursuant to the terms of this Section 2.4, Lessor's rights with respect thereto shall be deemed waived. If the boundaries of the Leased Premises established under this Section 2.4 differ from those of the Real Property, the Parties shall execute and file an amendment to the memorandum of this Lease, as set forth in Section 38 of this Lease, within thirty (30) days after finalizing the alterations, at Lessee's sole expense.

2.5 Commercial Operations Date. Lessee intends to install Solar Power Facilities on the Leased Premises consisting of such facilities, equipment and related improvements permitted under this Lease. The precise location on the Leased Premises and timing of such installation shall be determined by Lessee; provided that siting of Improvements shall comply with applicable Iowa law. The date of commencement of Operations shall be referred to herein as the "**Commercial Operations Date**". The Commercial Operations Date shall have the same meaning and be the same date as the "Commercial Operations Date", as defined under the power purchase agreement (the "**PPA**") entered into between Lessor and Lessee, such term and related provisions of the PPA being incorporated herein by this reference. Lessee represents and warrants that, unless otherwise agreed to in writing between Lessor and Lessee, the Commercial Operations Date shall occur no later than the "Guaranteed Commercial Operations Date", as defined in the PPA.

2.6 Lessor's Access. If Lessee's Operations result in the complete inability of Lessor to access (from any existing public right-of-way or private roadway to which Lessor has legal access) a part of the Leased Premises or land owned by Lessor adjacent to the Leased Premises, Lessee shall at its sole cost and expense, provide Lessor reasonable access to such land in a timely manner. Notwithstanding the foregoing, the Parties anticipate that Lessee may construct a fence encompassing both the Leased Premises and other portions of the Real Property, in which case Lessee shall provide Lessor a key to the fence gate so that Lessor may, at all times, access the Real Property. Lessee and Lessor agree to cooperate with each other in good faith to establish the location of any such access points, and under no circumstance shall Lessor's right of access diminish or interfere with Lessee's rights under this Lease

3. **Grant of Easements**. Lessor grants to Lessee, and Lessee accepts from Lessor, for the Term referenced in Section 4, the following easements over and across the Leased Premises in accordance with the terms and conditions of this Lease. The following easements are for the benefit of Lessee and Lessee's agents, contractors, employees and assigns; are located on the Leased Premises; and are collectively referred to as the "**Easements**".

3.1 Sun Non-Obstruction Easement. Lessor grants Lessee an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Leased Premises; provided such easement shall only apply to the Real Property and conditions thereon, and not adjacent parcels that Lessor does not legally own or control; and further provided that said easement shall not apply or be in effect until such time as the requirements of Section 564A.7 of the Iowa Code are satisfied at Lessee's expense. Lessor shall not engage in any activity on the Leased Premises or any other neighboring property owned by Lessor that materially interferes with the sunlight direction over any portion of Leased Premises; cause a decrease in the output or efficiency of any Solar Energy Facilities; or otherwise materially interfere with Lessee's operation of the Project or exercise of any rights granted in this Lease (collectively "**Interference**"). Normal farm and water treatment operations on neighboring properties that do not obstruct sunlight on a continuous basis shall not constitute Interference. Existing man-made improvements on the Leased Premises or on neighboring or adjoining properties owned by Lessor have been reviewed by Lessee prior to the Effective Date and the Parties agree that such improvements do not constitute Interference. Lessor retains the right to remove, replace, and expand any of such improvements if the replacement or expansion does not change the obstruction of sunlight caused by the existing improvements. If a question exists as to whether a potential replacement or expansion of such improvements by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the potential replacement or expansion. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed replacement or expansion would likely interfere with the rights of Lessee in the manner(s) prohibited hereunder. Lessor and Lessee acknowledge that, as of the Effective Date, the Project (defined below) is still in the conceptual stages and the configuration and siting of the Improvements has not been finalized. Accordingly, at this time Lessee is unable to provide, in accordance with Section 564A.7 of the Iowa Code, a legal description of the space which must remain unobstructed expressed in terms of the degrees of the vertical and horizontal angles through which the sun non-obstruction easement extends over the Leased Premises and the points from which these angles are measured. In relation thereto, within a reasonable time following substantial completion of the Project, if applicable and provided the Leased Premises remains a part of the Project, Lessee shall provide Lessor with written notice describing the aforementioned information with respect to the sun non-obstruction easement granted hereunder, and such notice shall be made part of and incorporated by this Lease via this reference, in accordance with and satisfaction of Section 564A.7 of the Iowa Code.

3.2 Effects Easement. To the extent permitted by law and within Lessor's rights and control as owner of the Real Property, Lessor grants to Lessee an easement over the Leased Premises for visual, glare, shadow, and such other effects attributable to the normal and customary operation of the Project located on the Leased Premises. Such easement(s) shall not permit Lessee to create conditions which are considered, under the law, to be nuisances on the Leased Premises, and shall not be used as a defense to any claims of nuisance or similar claims, or as the basis of a claim of indemnity against Lessor, or as a defense against a claim of indemnity by Lessor.

3.3 Access Easement. Lessor grants to Lessee an easement for ingress to and egress from the Solar Energy Facilities over and across the Leased Premises by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Leased Premises from time to time, for the benefit of and for purposes incidental to Operations on the Leased Premises and to the Improvements. Lessor shall not be responsible for any construction, reconstruction, replacement, repair or maintenance of any improvements located within the Leased Premises, and Lessee shall hereby be responsible and liable for any damage caused by Lessee or Lessee's Agents to any property (including any roadway or other improvements thereon) adjacent to the Leased Premises.

3.4 Transmission Easement. Subject to Lessee's compliance with all zoning and permitting requirements, Lessor grants Lessee an easement for the right to (i) install and maintain on the Leased Premises transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Leased Premises, and (ii) install and maintain on the Leased Premises communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Leased Premises.

The Improvements and Lessee's uses of the Leased Premises permitted under Section 2 and Section 3 of this Lease are hereinafter sometimes referred to as the "**Project**."

4. **Lease and Easement Term**.

4.1 Development Term. The initial period of this Lease, during which Lessee shall conduct development and construction activities shall commence on the Effective Date and shall continue until the Commercial Operations Date, unless sooner terminated in accordance with the provisions hereof, and subject to extension based on Force Majeure under the PPA ("**Development Term**").

4.2 Operations Term. The second period of this Lease, if any, during which Lessee may complete development and shall conduct Solar Operations, shall commence upon the expiration of the Development Term and shall continue for a period which ends at 12:59:59 p.m. on the date which is twenty-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs ("**Operations Term**") unless sooner terminated or extended in accordance with the provisions hereof. Lessee shall have the exclusive right to extend the Operations Term of this Lease for two (2) consecutive terms of five (5) years each in accordance with the terms and provisions of this Lease (singularly, the "**Extended Operations Term**" and collectively, the "**Extended Operations Terms**") by providing written notice to Lessor of Lessee's intent to extend the Operations Term at least two hundred forty (240) days prior to the end of the initial Operations Term; provided that Lessee shall only have the right to extend the Operations Term, as provided above, if: (i) the Improvements remain operational with respect to photovoltaic energy conversion and generation of electricity from sunlight, at the time of such election(s); and (ii) Lessor has the right and option to extend the term of the PPA for [a] period(s) equal to that of the Extended Operation Term(s), as provided in the PPA. In relation to the foregoing, if Lessor elects to extend the PPA, the terms of this Lease shall continue and remain unchanged for as long as the PPA remains in effect. If Lessor does not elect to extend the PPA, and Lessee wishes to extend this Lease via election of the Extended Operations Term(s) as provided above, Lessee may do so, provided that: (x) prior to the commencement of the applicable Extended Operations Term, the Parties shall engage a mutually agreeable third-party appraiser, at Lessee's sole cost and expense, to determine the fair market annual rental value of the Leased Premises based upon its use for photovoltaic energy conversion and generation of electricity from sunlight (the "**Extended Term Rent**"); (y) on or before the commencement date of the applicable Extended Operations Term, Lessee shall pay to Lessor the Extended Term Rent; and (z) on or before each anniversary of said date thereafter, Lessee shall pay to Lessor the Extended Term Rent, plus a two percent (2%) increase over the prior annual installment thereof, for the remainder of the Extended Operations Term(s). Upon any extension of this Lease via an election by Lessee as provided above in which Lessor duly-elects to extend the PPA, prior to commencement of the applicable Extended Operations Term Lessor and Lessee shall extend the generator interconnection agreement entered into between the Parties during the Operations Term upon the same terms, in relation to Lessee's Operations on the Leased Premises during the duration of the Extended Operations Term(s). Upon any extension of this Lease via an election by Lessee as provided above in which Lessor does not elect to extend the PPA, prior to the commencement of the applicable Extended Operations Term Lessor and Lessee shall enter into a new generator interconnection agreement upon mutually agreeable terms, in relation to Lessee's Operations on the Leased Premises during the duration of the Extended Operations Term(s). Each Extended Operations Term shall begin on the expiration date of the initial Operations Term or previous Extended Operations Term, as the case may be. The Development Term, the Operations Term, and the Extended Operations Terms (if applicable) are collectively referred to herein as the "**Term**". Each one year period commencing on the Effective Date (hereinafter defined) and on each anniversary of the Effective Date during the Term shall be referred to herein as a "**Lease Year**".

4.3 Limitations on Term. In the event the PPA is terminated in accordance with the terms of the PPA, including but not limited to Section 3.03 of the PPA, or due to Lessee's uncured and uncontested default under the PPA, the Term of this Lease shall end automatically on the date of the PPA's termination; provided that the foregoing shall exclude instances in which Lessee elects to extend the Term of this Lease and Lessor does not elect to extend the term of the PPA, all in accordance with Section 4.2 above, in which case this Lease shall remain in full force and effect during the Extended Operations Term(s) despite such termination or expiration of the PPA. Further, notwithstanding anything to the contrary in the Lease, in no event shall the Term of this Lease be longer than the longest period permitted by applicable law; accordingly, Lessor and Lessee agree that with respect to any time limitations set forth under Iowa law, the length of the Development Term, the Operations Term, and the Extended Operations Terms shall each be treated and measured independent of each other. Further, Lessor and Lessee agree that the limitations set forth under Article I, Section 24 of the Iowa Constitution shall not apply to this Lease and the uses hereunder, as this Lessee's use of the Leased Premises under this Lease are not of an agricultural nature.

5. **Ownership and Operation of the Improvements**.

5.1 Title. Title to the Improvements has been and is reserved to Lessee and remains the sole property of Lessee. Lessee may add or remove all or any portion of the Improvements at any time during the Term, irrespective of the manner or method of attachment of the same to the Leased Premises, provided same is accomplished in accordance with applicable laws. During the Term, Lessor shall have no ownership or other interest in any component of the Improvements or any tax credits or tax exemptions attributable to the Improvements or the electric energy, capacity or other generator-based products produced therefrom, whether in effect as of the Effective Date or as may come into effect in the future. For the avoidance of doubt, Lessee's right to benefit from any such tax credits or tax exemptions relating to Lessee's Improvements, existing or in the future, shall be superior to Lessor's. Notwithstanding the foregoing, any terms to the contrary in the PPA regarding ownership and/or entitlements with respect to the foregoing shall supersede and control while the PPA is in effect. Additionally, any such entitlements which, by law, are required to be passed through to the end users of the electric energy generated by the Project (i.e., Lessor) shall be excluded from the foregoing and be the property of Lessor while the PPA is in effect. If, under future laws, Lessee or any other holder of a leasehold interest in this Lease becomes ineligible for any tax credits or tax exemptions resulting from the operation of the Improvements or the solar energy generated therefrom, Lessor shall use commercially reasonable efforts to assist Lessee in the amendment of this Lease or replacement of this Lease with a different instrument acceptable to Lessor, in Lessor's commercially reasonable discretion (which discretion shall include but not be limited to Lessor's ability to obtain the approval of any lender of Lessor with a security interest in the Leased Premises), so as to convert Lessee's interest in the Leased Premises to a substantially similar interest that makes Lessee or any other holder of a leasehold interest in this Lease eligible for such tax credits or tax exemptions; *provided, however*, that such Lease amendment or replacement instrument does not: (a) directly or indirectly increase Lessor's obligations identified in this Lease; (b) decrease the value of the Leased Premises; (c) decrease Lessor's rights under this Lease; (d) limit Lessor's ability to obtain financing in the future for the Leased Premises upon terms that are reasonably acceptable to Lessor; (e) increase the amount of Lessor's real property taxes; (f) otherwise decrease the value of the benefits received by Lessor under this Lease; and/or (g) decrease the value of Lessor's reversionary interest in the Leased Premises following the expiration of the Term, as amended, or at the end of the term of the replacement instrument. Lessee shall reimburse Lessor for all reasonable and documented out-of-pocket expenses up to Five Thousand Dollars ($5,000.00) incurred by Lessor in assisting Lessee in obtaining the Lease amendment or replacement instrument, including, but not limited to, attorneys' fees. For purposes of this Section 5.1 only, the term "Lessee" shall include all direct and indirect owners and affiliates of Lessee. Notwithstanding the terms of this Section 5.1, the Parties acknowledge that Lessor may be entitled to certain other interests and attributes of the Project, as may be set forth in the PPA, or such other agreements concerning the Project (the PPA and such other agreements collectively being referred to herein as the "**Project Agreements**"), entered into between Lessor and Lessee. In accordance therewith, this Section 5.1 shall not be construed to prohibit, limit, cancel or reduce Lessor's rights and entitlements under the Project Agreements; provided the same does not conflict with or diminish Lessee's rights as to the ownership of the Improvements and tax credits or tax exemptions under this Section 5.1, unless agreed to by Lessee in writing.

5.2 Operation of Improvements. The manner of operation of the Improvements, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee. Notwithstanding the foregoing, Lessee at all times and at its sole cost and expense shall ensure that the Leased Premises and the Improvements are maintained and operated in accordance with prudent industry practices in place from time to time and in compliance with all applicable laws, governmental authorities, insurance underwriters, mortgages, deeds of trust, and covenants, conditions, and restrictions pertaining to the Leased Premises and the Improvements. During the construction and operation of the Improvements, Lessee shall take reasonably prudent measures to control and mitigate soil erosion on the Leased Premises.

6. **Permits and Governmental Approvals**. Lessee shall be responsible for obtaining at its sole cost and expense from any governmental agency or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights that are necessary in connection with the Project or the Operations; and Lessor shall, upon Lessee's request, execute, and, if appropriate, cause to be acknowledged and recorded, any application, document or instrument (including any variance, encroachment agreement or setback waiver) that is reasonably requested by Lessee in connection therewith. Such documents shall be in the form required by state or local government(s). Lessor shall cooperate with Lessee as necessary to obtain any governmental approvals related to use of Leased Premises for the purposes stated in this Lease at no cost or expense to Lessor. Lessee shall reimburse Lessor for its out-of-pocket expenses incurred in connection with such cooperation within ten (10) days after Lessee's receipt of a written request for such payment.

7. **No Rent**. Except as otherwise explicitly set forth in this Lease or the PPA, Lessee shall have no obligations with respect to the payment of rent or other amounts to Lessor in exchange for Lessee's use and/or occupancy of the Leased Premises as provided under this Lease. The Parties acknowledge and agree that this Lease is entered into in consideration of the benefits to the Parties derived from the Project, as more specifically set forth in the PPA, the receipt and sufficiency of which is hereby acknowledged by the Parties.

8. **Payment of Taxes**. Lessee shall pay any and all general real property taxes or personal property taxes levied on the Leased Premises and the Improvements that are directly attributable to the Operations and any solar energy conversion equipment installed by Lessee on the Leased Premises, including any increases in the ad valorem property taxes levied against the Leased Premises that are assessed for the period from and after the Effective Date until the end of the Term hereof and are directly attributable to Improvements installed by Lessee and the change in Property's use; provided, however, such obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or any interest or penalties thereon ("**Lessee's Taxes**"). Such Lessee's Taxes shall include any increase in taxes (or decrease in state property tax credits) due to: (i) a change in zoning classification of the Leased Premises or any other portion of the Lessor's real estate as a result of the Lessee's operations; (ii) a change in the classification of the Leased Premises or any other portion of the Lessor's real estate as agricultural or horticultural land for state property tax purposes; and (iii) the loss or partial loss of any municipal or governmental exemption to state property taxes due to the Lease of the Leased Premises for commercial operations. Lessee's responsibility for payment of taxes shall apply even if the Improvements, or a portion thereof, become subject to a replacement tax pursuant to Chapter 437A of the Iowa Code, as amended. Lessee shall have the right, at its sole expense, to appeal or contest any such increase it could be responsible to pay under this Lease and to compromise and settle the same, and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so. Lessor shall deliver to Lessee copies of all real property tax bills within thirty (30) days after receipt of the

bill by Lessor from the taxing authority and Lessee shall pay Lessee's Taxes on or before the date payment is delinquent. Lessee shall be responsible for any penalties and/or interest that may be due on the Lessee's Taxes as a result of the failure of Lessee to timely make such payments. If the Leased Premises are currently eligible, or become eligible, for an exemption from property taxes under applicable law, Lessor agrees that it will take reasonable actions to maintain, renew or obtain such exempt status, if possible to do so. The reasonable and documented out-of-pocket costs to do so shall be the responsibility of Lessee.

9. **Utilities**. Lessee shall be solely responsible for obtaining and paying for all utilities needed or used by Lessee on the Leased Premises, including any costs associated with establishing utility service. Lessor will not be liable for damages for any interruption in the availability of any utility or service. Such unavailability will not constitute an eviction or a disturbance of Lessee's use and possession of the Leased Premises or relieve Lessee from performing any of Lessee's obligations under this Lease. Lessor shall use commercially reasonable efforts to cooperate with Lessee in Lessee's efforts to obtain utility service to and from the Leased Premises.

10. **Liens**. Lessor and Lessee shall keep the other's interest in the Leased Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment furnished in connection with Lessor's or Lessee's (as applicable) ownership or use of the Leased Premises, subject to Lessor's and Lessee's (as applicable) right to contest such liens and claims. If Lessor or Lessee (as applicable) wishes to contest any such liens or claims, such Party shall, within forty-five (45) days after it receives notice of such lien or claim, provide a bond or other security as the other Party may reasonably request, or remove any such liens from the Leased Premises pursuant to applicable law.

11. **Maintenance of Leased Premises; Liability Waiver**.

11.1 Maintenance. Throughout the term of this Lease, Lessee shall, at Lessee's sole cost and expense, maintain the Improvements and all of the Leased Premises in good and clean condition and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies, including the orderly maintenance and upkeep of all vegetation, grass, and shrubs under the Improvements. Lessee shall not unreasonably clutter the Leased Premises and shall collect and dispose of any and all of Lessee's refuse and trash. If Lessor or Lessee discovers noxious weeds on the Leased Premises during the Term or receives notice from a governmental authority with jurisdiction thereover that noxious weeds are present on the Leased Premises, Lessee will undertake all reasonable measures to control such weeds and comply with all directives of any governmental authority with jurisdiction thereover.

11.2 Failure to Comply. If Lessee fails to comply with any obligation of Lessee under this Section 11, after Lessor has given Lessee at least forty-five (45) days prior written notice of such failure (except in event of emergency need for immediate action), Lessor shall have the right, in addition to remedies under paragraph 18 below, but not the obligation to take such measures to correct the noticed failure as Lessor deems necessary, in its reasonable discretion, and charge the reasonable cost and expense thereof to Lessee within forty-five (45) days.

12. **Security; Lessor's Access**. All security measures reasonably necessary to protect against damage or destruction of Lessee's Improvements, or injury or damage to persons or property on the Leased Premises, or the Operations, shall be provided by Lessee on the Leased Premises, including, if reasonably

necessary, warning signs, closed and locked gates, and other measures appropriate and reasonable. Lessor may access any part of the Leased Premises that is within Lessee's secured areas for the purpose of inspection of activities thereon upon twenty-four (24) hours' notice to Lessee, except in case of emergency, when no advance notice shall be required, provided that such access shall comply with Lessee's safety requirements and shall not in any manner interfere with Lessee's Operations nor violate applicable laws or governmental regulations.

13. **Insurance**. At all times during which Lessee is conducting any activities on the Leased Premises, and at all times during the Term of this Lease, Lessee shall, at its own cost and expense, obtain and maintain in effect coverage limits attributable to the Leased Premises under (a) commercial general liability insurance, with bodily injury and property damage coverage of at least One Million Dollars ($1,000,000) per occurrence and Four Million Dollars ($4,000,000) in the aggregate, (b) workers' compensation or employers' liability insurance in the amount required by Iowa law and (c) automobile liability insurance of at least One Million Dollars ($1,000,000) per accident. Lessor shall be provided with additional insured status on all polices of such insurance, excluding those for workers' compensation or employers' liability. Lessee shall provide to Lessor a certificate evidencing such coverage. The foregoing requirements may be satisfied by combination of general liability and umbrella/excess liability policies. The insurance provided by Lessee shall be primary and non-contributing for Lessee's activities on the Leased Premises with respect to Lessor's insurance.

14. **Lessor's Representations, Warranties and Covenants**. In addition to all other representations, warranties or covenants set forth in this Lease, express or implied, Lessor hereby represents, warrants and covenants to Lessee as follows:

14.1 Lessor's Authority. Lessor is the sole owner of the Leased Premises and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted hereunder. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership or possessory interest in the Leased Premises are signing this Lease as Lessor. When signed, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. No consent or other approval, authorization or action by, or filing with, any person is required to be made or obtained by such party for Lessor's lawful execution, delivery and performance of this Lease.

14.2 Liens and Tenants. To the best of Lessor's actual knowledge, there are no liens, encumbrances, leases, fractional interests, mineral rights or oil and gas rights, or other exceptions to Lessor's fee title ownership of the Leased Premises or otherwise burdening the surface estate of Lessor in the Leased Premises which would prevent or inhibit Lessee's use and occupancy of the Leased Premises as contemplated under this Lease. Lessor has not received any notice (orally or in writing) from any third-party of any adverse claim or encumbrance burdening the Leased Premises. There are no tenants on the Leased Premises or leases encumbering the Leased Premises as of the Effective Date. If applicable, Lessor will cause Lessor's tenant(s) under such leases to vacate the Leased Premises as of the Effective Date to allow for Lessee's exclusive use and quiet enjoyment thereof, without liability to Lessee.

14.3 No Interference. On or after the Effective Date, Lessor shall not grant any rights to any person or entity, which would, currently or in the future, impede or interfere with: (a) Lessee's surface access to the Project and the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of the Project; (b) the flow of solar radiation, or direction of exposure to the sun over the Leased Premises; or (c) the undertaking of any other activities of Lessee permitted under this Lease. Provided, however, the foregoing provision shall not apply to any utility easement that Lessor is required to execute pursuant to applicable law. If a question exists as to whether a potential grant of rights by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the potential grant of rights. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed grant of rights could interfere with the rights of Lessee in the manner(s) prohibited hereunder.

14.4 Title Review and Cooperation. Lessor, at no cost to Lessor, shall cooperate with Lessee to obtain non-disturbance, subordination and other title curative agreements as reasonably requested by Lessee from any person with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Leased Premises to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Lease. Lessor shall also provide Lessee with any further assurances and shall execute any truthfully accurate estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

14.5 Requirements of Governmental Agencies/Lenders. During the Term, Lessor, at no cost to Lessor, shall use commercially reasonable efforts to cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Improvements, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Lessor for its actual, reasonable out of pocket expenses incurred in connection with such cooperation.

14.6 Hazardous Materials. To Lessor's actual knowledge, Lessor is in material compliance with all environmental laws as the same are applicable to the Leased Premises, and is not subject to any environmental proceedings with respect to the Leased Premises, nor is there any environmental proceeding with respect to the Leased Premises to which any other person is subject. Lessor has not received any written notice of any violation, and to the actual knowledge of Lessor, no other person has received any written notice of any violation, that, as of the date hereof, remains uncured, and no writs, injunctions, decrees, orders or judgments outstanding, no suits, claims, actions, proceedings or investigations have been instituted or filed, and none are pending or, to the knowledge of Lessor, threatened, under any environmental laws with respect to the ownership, use or occupation of the Leased Premises. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation; provided, however, that normal agricultural use of agricultural pesticides and other chemicals commonly used on crops in conformance with generally accepted agricultural practices shall not be included as a Hazardous Material for purposes of this Lease. As of the Effective Date, to Lessor's actual knowledge: (a) no Hazardous Materials have ever been produced on the Leased Premises or disposed of thereon or therein, (b) no release has occurred on the Leased Premises, and (c) no Hazardous Materials have migrated to the Leased Premises. Lessor shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Lessor or Lessor's Agents (hereinafter defined), or by Lessor's predecessors-in-interest and known by Lessor as of the Effective Date, of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which were or are introduced, released, or brought onto the Leased Premises by Lessor, Lessor's Agents or Lessor's predecessors-in-interest.

15. **Lessee's Representations, Warranties and Covenants**. In addition to all other representations, warranties or covenants set forth in this Lease, express or implied, Lessee hereby represents, warrants and covenants to Lessor as follows:

15.1 Lessee's Authority. Lessee is a Nebraska limited liability company, is not in violation of any provisions of its Articles of Organization or operating agreement(s), is authorized and financially capable to enter into and perform its obligations under this Lease and, to the best of the knowledge of Lessee, is not in violation of the laws of the State of Nebraska. Each person signing this Lease on behalf of Lessee is authorized to do so. When signed, this Lease constitutes a valid and binding agreement enforceable against Lessee in accordance with its terms. No consent or other approval, authorization or action by, or filing with, any person is required to be made or obtained by such party for Lessee's lawful execution, delivery and performance of this Lease.

15.2 Mechanic's Liens. Lessee shall at all times keep and maintain the Leased Premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for the benefit of Lessee in connection with the Leased Premises. The interest of Lessor in the Leased Premises shall not be subject to liens for improvements made by or on behalf of Lessee, and nothing contained in this Lease shall be construed as a consent on the part of Lessor to subject Lessor's estate in the Leased Premises to any lien or liability under applicable law. Lessee will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work by Lessee on the Leased Premises and will hold Lessor harmless from all losses, costs, or expenses based on or arising out of asserted claims or liens with respect to such work against the leasehold estate or against the interest of Lessor in the Leased Premises or under this Lease. Lessee will give Lessor immediate notice of any lien or encumbrance against the Leased Premises as a result of work by Lessee and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided Lessee may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Lessee causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Lessor within such thirty (30)-day period.

16. **Indemnity**.

16.1 Indemnity by Lessee. Lessee shall defend, indemnify and hold Lessor, and Lessor's elected and appointed officials, employees, agents, contractors, tenants, heirs and successors harmless from and against all Defaults (subject to applicable cure periods) and all actions, claims, demands, losses, expenses, (including attorney fees), liabilities and claims of liability, for damage to property or injury to persons resulting from the Operations or the Project or any actions, inaction or activities of Lessee, its agents, contractors, employees, guests, invitees, licensees and permittees (collectively, "**Lessee's Agents**") on or about the Leased Premises or any adjacent property (including but not limited to any private roadways located on adjacent property), except to the extent that such liability or loss is due to the negligence or willful misconduct of Lessor or its agents, employees, contractors, guests, invitees, licensees and permittees (collectively, "**Lessor's Agents**").

16.2 Indemnity by Lessor. To the extent allowed by law, and subject to the restrictions and protections provided under the Iowa Tort Claims Act, Lessor shall defend, indemnify and hold Lessee, and Lessee's directors, officers, members, shareholders, partners, tenants, heirs and successors harmless from and against all Defaults (subject to applicable cure periods) and all liability and claims of liability, for damage to property or injury to persons resulting from actions or activities of Lessor's Agents on the Leased Premises, except to the extent that such liability or loss is due to the negligence or willful misconduct of Lessee or Lessee's Agents.

16.3 Hazardous Materials. Lessee shall not violate, and shall defend, indemnify and hold Lessor harmless against, any claims, costs, damages, fees or penalties arising from a violation by Lessee or Lessee's Agents of any federal, state or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, on or under the Leased Premises, except for any such violation in existence on or under the Leased Premises as of the Effective Date of this Lease.

16.4 Survival of Provision. The obligations of the Parties under this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Assignment; Right to Mortgage and Assign**.

17.1 Terms. As used in this Lease, the term "**Sublessee**" means any person that receives an interest from Lessee of less than all of the right, title or interest under this Lease and the term **"Sublease"** means the grant or assignment of such rights from Lessee to a Sublessee.

17.2 Encumbrances, Security Interests, and Mortgages.

(a) Lessee or a Sublessee may, without Lessor's consent, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Lease, the leasehold estate and/or easement estate(s) created by this Lease (collectively, the **"Leasehold Estate"**), any Sublease, and the Project (collectively, the **"Solar Assets"**) in connection with the financing of all or any portion of the Project, which security interests (including any deeds of trusts) in all or a part of the Solar Assets are collectively referred to in this Lease as **"Mortgages"** and the holders of the Mortgages, their designees and assigns are each referred to in this Lease as a **"Mortgagee"**. Under no circumstances shall any Mortgagee or Sublessee have any greater rights of ownership or use of the Leasehold Estate than the rights granted to Lessee in this Lease, and under no circumstance shall any Mortgagee or Sublessee have any greater rights or lesser responsibilities than Lessee under the terms of this Lease. Notwithstanding anything in this Lease to the contrary any Sublessee shall be bound by the terms of this Lease to the extent of such Sublessee's interest in and to the Leased Premises or Solar Assets. Lessee shall provide Lessor with written notice of any Mortgage(s) within ninety (90) days after such Mortgage(s) becomes legally binding.

(b) Subject to Section 14.4 of this Lease, Lessor may, upon prior written notice from Lessor to Lessee, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Leased Premises so long as such conveyances do not interfere with Lessee's rights and interests under this Lease. Notwithstanding the foregoing, Lessor may sell, devise or otherwise transfer fee title to the Leased Premises without Lessee's consent so long as any subsequent owner is bound by the terms of this Lease and so long as such conveyances do not interfere with Lessee's rights and interests under this Lease.

17.3 Assignments. Without the prior written consent of Lessor, Lessee and each Sublessee shall also have the right to sell, convey, transfer, lease, or assign its interest in this Lease or Sublease, as the case may be, or any portion thereof, and all or any portion of the Solar Assets on either an exclusive or non-exclusive basis, or to apportion, grant sub-easements, co-easements, separate easements, leases, subleases, co-leases, co-tenancy rights, licenses or similar rights, however denominated (collectively, "**Assignments**") to any third party; provided that the assignee assumes all duties and obligations of Lessee under this Lease. The terms of such Assignment(s) shall not expand, or alter in any way, the rights and obligations of the Parties under this Lease. Upon the effective date of any Assignment under which all of the interest of Lessee or any Sublessee (or the interest of their respective successors or assigns) in the Solar Assets is assigned, Lessee or Sublessee, as the case may be, shall be released from any liability under this Lease or Sublease, as applicable, accruing on or after the effective date of the Assignment, provided that the assignee assumes in writing the obligations of the assigning party. Notwithstanding the foregoing, in the event of any Assignment under which less than all of the interest of Lessee or any Sublessee (or the interest of their respective successors or assigns) in the Solar Assets is assigned, Lessee or Sublessee, as the case may be, shall not be relieved of its obligations under the Lease or Sublease, as applicable, and Lessee or Sublessee shall continue to be primarily liable to the same extent as though no Assignment has been made, unless otherwise agreed to in writing by Lessor. Lessee shall provide written notice to Lessor of any Assignment(s) within ninety (90) days after such Assignment(s) becomes legally binding; provided, however, that failure to give such notice shall not constitute a default under this Lease, but rather shall only have the effect of: (a) not binding Lessor with respect to such Assignment(s) until such notice is given, and (b) not releasing the assignor from liability under this Lease until such notice is given. Any member of Lessee or a Sublessee shall have the right from time to time without Lessor's consent to transfer any partnership, membership or other ownership interest in Lessee or a Sublessee to one or more persons or entities. Lessor may assign this Lease to any subsequent purchaser of the Leased Premises, and upon such assignment shall be released from all rights and obligations under this Lease arising subsequent to such assignment, and the subsequent purchaser shall assume all rights and obligations under this Lease; provided that any such assignment shall only be effective if it: is documented in a writing that is in a recordable form, a recordable copy of which shall be provided to Lessee within ten (10) days of any such purchase and sale of the Leased Premises, and explicitly provides for the assumption of all obligations and liabilities of Lessor by the assignee thereunder.

17.4 Limitations on Assignment and Sublease. Notwithstanding anything to the contrary in this Lease, Lessee may only enter into said Assignments or Subleases, without Lessor's prior consent, with respect to: (i) transactions made in connection with Lessee's "Financing Documents" (as defined in the PPA); and/or (ii) transactions with an entity that is wholly-owned by Sandhills Energy, LLC, a Nebraska limited liability company (i.e., the parent company of Lessee). All other Assignments shall require the prior written consent of Lessor, which shall not be unreasonably conditioned, delayed or withheld.

18. **Default**. Each of the following events shall constitute an event of default ("**Default**") by the Parties and shall permit the non-defaulting Party to terminate this Agreement and pursue all other appropriate remedies.

(a) The failure or omission by Lessee (or permitted assign) to pay any amount required to be paid hereunder when due, and such failure or omission has continued for thirty (30) days after the date Lessee (or permitted assign) receives written notice from Lessor of such failure or omission to pay;

(b) The failure or omission by any Party to observe, keep, or perform any of the other terms, agreements, or conditions set forth in this Lease (except payment obligations), and such failure or omission has continued for thirty (30) days (or such longer period required to cure such failure or omission, not to exceed ninety (90) days, if such failure or omission cannot reasonably be cured within such thirty (30)-day period) after written notice from the other Party;

(c) A Party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within thirty (30) days after filing; or

(d) The occurrence of an event of default by a Party under the PPA, following the expiration of all applicable cure periods with respect to such event of default thereunder.

In the event of any Default, the non-defaulting Party shall give written notice thereof to the alleged defaulting Party and any Mortgagee that has, in writing to the noticing Party, requested Default notice copies, which notice shall include the acts required to cure the same with reasonable specificity. Delinquent payments shall bear interest from their respective due dates until paid at the rate of eight percent (8%) per annum. Any prohibited conduct under this Lease may be enjoined and this Lease shall be specifically enforceable. Subject to the other terms and conditions of this Lease, each Party shall have all rights and remedies available at law and in equity for any Default by the other Party. The obligations of the Parties under this Section 18 shall survive the expiration or earlier termination of this Lease.

Upon a default, the non-defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease pursuant to applicable law, all of which remedies shall be cumulative.

19. **Termination by Lessee**. Provided Lessee is not in default under any term of this Lease, Lessee, at its option, shall have the right to terminate this Lease at any time during the Term of the Lease, as to all or any part of the Leased Premises, subject to the terms of this Section 19. Termination shall be effective on the date when Lessee has fulfilled its obligations under Section 20 of this Lease. If Lessee's notice is a full termination of all the Leased Premises, the Parties shall be relieved of all further duties and obligations under this Lease and the PPA, other than (i) the payment of any accrued and unpaid obligations or liabilities owed by either Party as of the date of termination; (ii) the removal of the Improvements by Lessee pursuant to Section 20.2; and (iii) any other obligations and liabilities that are expressly stated in this Lease to survive such termination. Upon any such partial termination by Lessee, the Parties shall be relieved of all further duties and obligations under this Lease with respect to the portion thereof terminated by Lessee, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall

continue to be applicable to the terminated portion of this Lease. The Parties agree to execute an amendment to this Lease evidencing such partial termination at the sole cost and expense of the Lessee and the Lessor shall be reimbursed for its reasonable and documented out-of-pocket costs up to Five Thousand Dollars ($5,000.00), including, but not limited to attorneys' fees, incurred as a direct result of obtaining such amendment. Notwithstanding the foregoing, Lessee's right to terminate this Lease under this Section 19 shall be limited to the following: (y) instances in which the PPA has been terminated, and such termination was not due to Lessee's uncured default thereunder; and (z) during the Extended Operations Term(s), as applicable, so long as the PPA is no longer in effect. Under no circumstance shall Lessee have the right to terminate this Lease while the PPA is in effect.

20. **Surrender and Restoration**.

20.1 Surrender. Upon any termination, surrender, or expiration of this Lease, Lessee shall remove all of Lessee's Improvements as stated below and restore the Leased Premises to the condition in which they existed before the Effective Date, and shall peaceably deliver up to Lessor possession of the Leased Premises or any part thereof, and other rights granted by this Lease, and shall execute, at Lessor's request, any and all documents needed to record or evidence such termination with the appropriate governmental agency.

20.2 Restoration. Within six (6) months after any termination, surrender, or expiration of this Lease, Lessee at its sole cost and expense, shall decommission the Solar Energy Facilities, which shall include the removal of all Improvements including, but not limited to all improvements, structures, and sub-stations. Within such six (6) month period, subject to tolling as provided below, Lessee shall also restore the Leased Premises to the condition as it existed on the Effective Date, including the removal or remediation of any Hazardous Materials existing on the Leased Premises as a result of the Project, and shall repair any damage to the Leased Premises as a result of the construction, operation or removal of Lessee's Improvements under this Section 20.2 ("**Restoration**"). On or before the Commercial Operations Date, Sandhills Energy, LLC, as an affiliate with a beneficial interest in Lessee, shall execute and deliver to Lessor a limited guarantee agreement, for the benefit of Lessor, guaranteeing the Restoration Amount (defined below) for the Term of this Lease (the "**Restoration Guarantee**"). The obligations and liabilities of the guarantor under the Restoration Guarantee shall be limited to Lessee's obligations with respect to Restoration, in an amount up to the Restoration Amount, as provided under this Section 20.2, and shall not act as a guarantee of any other obligations or liabilities under this Lease or elsewhere. The "**Restoration Amount**" is defined as an amount equal to the expected cost to complete the Restoration, less the salvage value of all the Improvements, as determined by a qualified third-party engineer. As of the Commercial Operations Date, the Restoration Guarantee shall remain in effect at all times until Lessee fully satisfies its Restoration obligations in accordance with this Section 20.2. The Restoration Guarantee shall explicitly prohibit rescission, modification or termination by Lessee before such time; provided that the guarantor under the Restoration Guarantee may be substituted with a replacement guarantor, in Lessee's sole discretion and without the consent of Lessor, so long as such replacement guarantor maintains at least $10,000,000 in assets. Absent the establishment of a replacement guarantor in accordance with the foregoing, any Assignment(s) or Sublease(s) of this Lease under Section 17, above, shall not release the guarantor in existence at the time of such Assignment or Sublease from its obligations and liabilities under the Restoration Guarantee, and such guarantor shall remain bound thereunder with respect to any such assignee or sublessee. The assets of any such replacement guarantor shall be evidenced by written financial statements prepared by a certified accountant provided to Lessor prior to such substitution becoming effective. All other modifications to the Restoration Guarantee shall require the prior written approval of Lessor. Notwithstanding the foregoing, Lessee's Restoration obligations shall not include the removal of below ground electric lines and cables buried at a depth of more than four (4) feet measured from the topsoil directly above such electric lines and cables, and such Improvements may remain on the Leased Premises without liability to Lessee beyond termination, surrender or expiration of this Lease, and shall become the property of Lessor at such time. Upon the written consent of Lessor, Lessee may leave all roads and grading in their condition existing at the time this Lease terminates. Lessor shall have the opportunity to reasonably inspect the Restoration completed by the Lessee hereunder and, if Lessor does not believe Lessee has satisfied its Restoration obligations, Lessor shall notify Lessee in writing of any incomplete Restoration Obligations within nine (9) months after any termination, surrender, or expiration of this Lease. Upon receipt of such notice, Lessor and Lessee agree to cooperate with each other in good faith to resolve any disputes with regard to completion of Restoration, and if resolved, the deadline for Restoration shall be tolled until completion; provided that such deadline shall not be tolled beyond a maximum of twelve (12) months. If Lessor fails to notify Lessee in writing of any incomplete Restoration Obligations within nine (9) months after any termination, surrender, or expiration of this Lease, it shall be conclusively deemed that Lessee satisfied all obligations with respect to Restoration hereunder, and the Restoration Guarantee shall be of no further force or effect. This Section 20.2 shall survive expiration or termination of this Lease.

21. **Condemnation**.

21.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Leased Premises, or the Improvements thereon, for any public use or otherwise, then the interests and obligations of Lessee under this Lease in or affecting the Leased Premises shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Leased Premises or the Project thereon, (ii) the date that Lessee determines it is no longer able or permitted to operate the Project on the Leased Premises in a commercially viable manner, or (iii) the date of the condemnation judgment; at which time this Lease shall terminate and Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease except the obligations which arose prior to such termination and/or that survive the expiration or earlier termination of this Lease.

21.2 Partial Taking. If, at any time during the Term, any authority having the power of eminent domain shall condemn any portion, less than substantially all, of the Leased Premises, then the interest and obligations of Lessee under this Lease as to those Improvements or the Leased Premises so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Leased Premises, (ii) the date that Lessee determines it is no longer able or permitted to operate portion of the Project so taken on the Leased Premises, in a commercially viable manner, or (iii) the date of the condemnation judgment, and, unless this Lease is terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of the Leased Premises; provided, however, that if Lessee, in its sole discretion, determines that such partial taking would cause the continued operation of the entire Project not to be commercially viable, Lessee shall have the right to terminate this Lease via written notice to Lessor. If Lessee so terminates, Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease except the obligations which arose prior to such termination and/or that survive the expiration or earlier termination of this Lease.

21.3 Condemnation Award. In the event of a complete or partial taking of the Solar Assets, Lessee shall be entitled to receive all compensation and damages paid by the condemning authority arising from such taking and payable on account of Lessees' Improvements, loss of revenue, relocation costs, inability to relocate, and loss of interest in and to the Leased Premises provided under this Lease; Lessor shall be entitled to all other amounts of the award. If allowed under the law, Grantee may separately pursue a claim against the condemnor for such damages.

22. **Certain Protective Covenants**.

22.1 Noninterference. Subject to Section 3.1 of this Lease, during the term of this Lease, Lessor covenants and agrees that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted by this Lease; (ii) take any action or permit any condition to exist on the Leased Premises which will materially interfere with the availability or accessibility of sunlight on or to the Leased Premises; (iii) take any action which will in any way materially interfere with the transmission of electric, electromagnetic or other forms of energy to or from the Leased Premises; or (iv) take any action which will materially impair Lessee's access to the Leased Premises for the purposes specified in this Lease, materially obstruct access to sunlight on, over or across the Leased Premises or materially impair Lessee's access to any or all of the Improvements. Notwithstanding the foregoing, Lessor shall have no obligation under this Lease to provide, obtain or maintain any easement for sunlight on, over or above any real property not owned or controlled by Lessor. If a question exists as to whether an act or potential act by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the act. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed act could interfere with the rights of Lessee in the manner(s) prohibited hereunder.

22.2 Quiet Enjoyment. Provided Lessee observes the terms and conditions of this Lease, Lessor warrants that Lessee shall peaceably hold and enjoy the Leased Premises, and any and all other rights granted by this Lease for its entire term without hindrance or interruption by Lessor or any other person or persons lawfully or equitably claiming by, through or under Lessor except as expressly provided in this Lease.

22.3 Observance of Laws and Covenants; Safety. Lessee shall use the Leased Premises granted by this Lease only for the purposes stated herein and shall conduct all of its operations on the Leased Premises in a lawful manner after obtaining all necessary permits and government approvals.

23. **Consequential Damages Waiver**. The Parties shall have no liability for any special, consequential or exemplary damages or losses of any kind, whether arising in contract, warranty, tort

(including negligence), strict liability or otherwise, including, but not limited to, losses of use, profits, business, reputation, or financing.

24. **<u>Mortgagees</u>.**

24.1 **<u>Mortgagee Protection</u>**. Any Mortgagee, upon delivery to Lessor of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease or a Sublease as the case may be:

(a) **Right to Cure Defaults/Notice of Defaults**. To prevent termination of this Lease or any partial interest in this Lease, each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any Default by Lessee and to prevent the termination of this Lease or any partial interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged Default by Lessee, Lessor shall give written notice of such Default to each Mortgagee that has delivered to Lessor notice of its name and address and who has requested to receive copies of a Default notice concurrently with delivery of such notice to Lessee, specifying in detail the alleged Default and the required remedy. Each such Mortgagee shall have the same amount of time to cure the Default as is given to Lessee. The cure period for each Mortgagee shall begin to run upon receipt of written notice from Lessor to Mortgagee.

(b) **Extended Cure Period**. If any Default by Lessee under this Lease cannot be cured without the Mortgagee obtaining possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of Lessee's interest in this Lease, then any such Default shall be deemed remedied if: (i) Mortgagee or its assignee cures any outstanding monetary Default within the cure periods provided in <u>Section 18</u>; (ii) within the cure period granted to Mortgagee in <u>Section 18</u> above, either Mortgagee or its assignee shall have acquired possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of such interest in this Lease, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (iii) the Mortgagee or its assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iv) after gaining possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of such interest in this Lease, the Mortgagee or its assignee cures all Defaults under the Lease to the extent required in <u>Section 18</u>, and performs all other obligations as and when the same are due in accordance with the terms of this Lease. If a Mortgagee or its assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting assignee, as the case may be, from commencing or prosecuting the proceedings described above, the period specified above for commencing such proceeding shall be extended for the period of such prohibition.

(c) **Acquisition of Title**. Following acquisition of all or a portion of the Solar Assets by the Mortgagee, its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease or a Sublease, as the case may be, shall continue in full force and effect, and the party acquiring title to the Solar Assets shall cure all monetary Defaults within thirty (30) days of acquiring title, and as promptly as reasonably possible, commence the cure of all other Defaults under this Lease or a Sublease, as the case may be, and thereafter diligently process such cure to completion within ninety (90) days after title is acquired, whereupon Lessor's right to terminate this Lease based upon such Defaults shall be deemed waived, providing all Defaults are cured. Any Mortgagee or other party who acquires Lessee's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease incurred or accruing after such Mortgagee or acquiring party no longer has ownership of the Lease and possession of the Leased Premises.

(d) **Mortgagee's Right to Possession, Right to Acquire and Right to Assign**. A Mortgagee shall have the absolute right (i) to assign its Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Solar Assets by any lawful means; (iii) to take possession of and operate all or any portion of the Solar Assets and to perform all obligations to be performed by Lessee or a Sublessee under this Lease or a Sublease as the case may be, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Solar Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Lessor's consent to assign or transfer all or any portion of the Solar Assets to a third-party so long as such assignee or transferee is financially capable of carrying out Lessee's obligations under this Lease, and Lessor's consent, which shall not be unreasonably withheld, conditioned or delayed, shall be required for any other assignment or transfer. Upon acquisition of the interests of all or any portion of the Solar Assets by a Mortgagee or any other third-party which acquires the interests, from or on behalf of the Mortgagee, in accordance with the terms of this Lease, Lessor shall recognize the Mortgagee or such other party (as the case may be) as Lessee's or a Sublessee's proper successor, and this Lease and any such Sublease shall remain in full force and effect.

(e) **Liability**. Any Mortgagee that does not directly hold an interest in the Solar Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Lease or a Sublease as the case may be prior to the time the Mortgagee directly holds an interest in the Solar Assets, or succeeds to absolute title to Lessee's or a Sublessee's interest therein. A Mortgagee shall be liable to perform Lessee's or a Sublessee's obligations under this Lease or a Sublease as the case may be only for and during the period it directly holds such interest or title. Furthermore, if Mortgagee elects to (i) perform Lessee's or a Sublessee's obligations under this Lease or the Sublease as the case may be, (ii) continue Operations on the Leased Premises, (iii) acquire any portion of Lessee's or a Sublessee's right, title or interest in all or any of the Solar Assets or (iv) enter into a new Lease or a Sublease as the case may be as provided in Section 24(g), then the Mortgagee shall not have any personal liability to Lessor, and Lessor's sole recourse against Mortgagee shall be to execute against the Mortgagee's interest in the Solar Assets. Moreover, any Mortgagee or other party which acquires the Solar Assets by foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations under this Lease or a Sublease, as the case may be, to the extent the obligations are incurred or accrue after that Mortgagee or other party no longer has ownership of the Solar Assets and possession of the Leased Premises.

(f) **Termination**. Neither the bankruptcy nor the insolvency of Lessee or a Sublessee shall be grounds for terminating this Lease or a Sublease so long as all payments and all other monetary charges payable by Lessee or Sublessee under this Lease or a Sublease, as the case may be, are paid by the Mortgagee in accordance with the terms of this Lease or a Sublease, as the case may be.

(g) **New Lease**. If this Lease or a Sublease, as the case may be, terminates for any reason, including, without limitation, because of Lessee's or a Sublessee's uncured Default or because it is rejected or disaffirmed under bankruptcy law or any other law affecting creditors' rights, then, so long as a

Mortgagee has cured any monetary and/or insurance Default prior to expiration of the Mortgagee cure period identified in Section 18 and is making commercially reasonable efforts to cure any non-monetary Default, Lessor will, immediately upon written request from the Mortgagee received within ninety (90) days after the termination, rejection, or disaffirmance, without demanding additional consideration therefor, enter into a new Lease or a new Sublease as the case may be in favor of the Mortgagee, which new Lease or new Sublease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease or the Sublease, as the case may be (except for any requirements that have been fulfilled by Lessee or a Sublessee prior to the termination, rejection, or disaffirmance), (ii) be for a term commencing on the date of the termination, rejection, or disaffirmance and continuing for the remaining Term or the term of the Sublease, as the case may be, before giving effect to the termination, rejection, or disaffirmance, (iii) contain a lease or sublease as the case may be on, over, under, upon along and across the Leased Premises or such portion thereof as to which the Mortgagee held a lien on the date of the termination, rejection, or disaffirmance, (iv) contain a grant to the Mortgagee of access, transmission, communications, utility, and other easements covering such portion or portions of the Leased Premises as Lessee held under this Lease prior to its termination, (v) impose the same rights and obligations of the Parties as imposed under this Lease, (vi) not provide Mortgagee with any rights or entitlements in excess of those provided to Lessee, or change or increase the obligations of Lessor, as provided under this Lease, and (vii) enjoy the same priority as this Lease or a replaced Sublease, as the case may be, has over any lien, encumbrance or other interest created by Lessor, and, until such time as the new Lease or Sublease as the case may be is executed and delivered, the Mortgagee may enter, use and enjoy the Leased Premises and conduct Operations on the Leased Premises as if this Lease or the Sublease, as the case may be, were still in effect at the option of the Mortgagee, the new Lease or Sublease, as the case may be, may be executed by a designee of the Mortgagee, with the Mortgagee assuming the burdens and obligations of Lessee or a Sublessee thereunder. If more than one Mortgagee makes a written request for a new Lease or Sublease, as the case may be, under this Section 24.1(g), then the new Lease or Sublease shall be delivered to the Mortgagee whose lien is senior in priority.

(h) **Mortgagee Consent**. Lessor shall not agree to any material amendment, mutual termination or modification or accept any surrender of this Lease, nor shall any such amendment, termination, modification or surrender be effective, without the written consent of the Mortgagee.

(i) **Amendments**. Lessor and Lessee shall cooperate in amending this Lease from time to time to include any provision that may reasonably be requested by any Mortgagee for the purpose of preserving the Mortgagee's interest in the Leased Premises, provided that neither Lessor's rights nor Lessee's obligations under this Lease are diminished thereby.

24.2 Estoppel Certificates and Cooperation. Each Party will, within thirty (30) business days following receipt of written request from the other Party, execute estoppel certificates (certifying as to truthful matters, including that no default then exists under this Lease or a Sublease, if such be the case), consents to assignment and non-disturbance agreements provided for in this Lease as Lessor, Lessee, a Sublessee or any Mortgagee may reasonably request at any time and from time to time. Lessor, Lessee and Sublessee (if applicable) will cooperate in (a) amending this Lease or a Sublease, as the case may be, from time to time to include any provision that may be reasonably requested by Lessee or a Sublessee or any Mortgagee to implement the provisions contained in this Lease or a Sublease as the case may be, or to preserve a Mortgagee's security interest, and does not materially prejudice Lessor's rights under, or interest in, this Lease, and (b) execute any documents that may reasonably be required by Lessee, a Sublessee, or a Mortgagee to implement the provisions of this Section 24.2. Lessor will request any of Lessor's lenders holding an interest secured by the Leased Premises to execute an agreement of non-disturbance furnished by any Mortgagee with respect to Lessee's or a Sublessee's interest in the Lease. Lessor's cooperation with Lessee under this provision shall be at the sole cost and expense of the Lessee and the Lessor shall be reimbursed for its reasonable and documented out-of-pocket costs up to Three Thousand Dollars ($3,000.00), including, but not limited to attorneys' fees, incurred as a direct result of Lessor's cooperation.

24.3 No Merger. There shall be no merger of this Lease with the fee estate in the Leased Premises by reason of the fact that this Lease or any interest in the Leased Premises may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises, and all persons (including each Mortgagee) having an interest in this Lease or in the estate of Lessor and Lessee, shall join in a written instrument effecting such merger and shall duly record the same.

24.4 Damage/Condemnation. Notwithstanding anything to the contrary in this Lease, the disposition of any condemnation award and/or casualty insurance proceeds shall be governed by the terms of any first priority Mortgage encumbering Lessee's interest in the Solar Assets to the extent the same conflicts with the terms of this Lease.

25. **Notice**.

25.1 Writing. All notices given or permitted to be given hereunder shall be in writing.

25.2 Delivery. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) when delivered by courier service which certifies in writing the date of delivery, or five (5) business days after deposit in the United States mail as certified or registered mail (return receipt requested), in a sealed envelope or container, postage and postal charges prepaid, addressed by name and addressed to the Party or person intended as follows:

Notice to Lessor: Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Notice to Lessee: SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

With copy to: Michael D. Sands
Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, NE 68102
msands@bairdholm.com

25.3 Change of Recipient or Address. Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

26. **Expenses of Enforcement**. To the extent permitted under Iowa law, if any Party hereto brings any action or proceeding to interpret or enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party or parties thereto reimbursement for all reasonable expenses, costs and fees incurred in connection with the action or proceeding, including such expenses, costs and fees incurred due to any appeal.

27. **Further Assurances**. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Lease and to give full force and effect to each and all of the provisions thereof.

28. **Amendments**. This Lease shall not be amended or modified in any way except by an instrument signed by Lessor and Lessee.

29. **Severability**. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby.

30. **Governing Law and Dispute Resolution**.

30.1 This Lease shall be governed by the laws of the State of Iowa. Any action to enforce or interpret any provision of this Lease shall be filed in any state or federal court in Iowa having jurisdiction and which is a proper venue in the matter.

30.2 The Parties agree to first attempt to settle any dispute arising out of or in connection with this Lease by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Lease, each shall have all remedies available at law or in equity and as provided by this Lease. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Lease shall be to the court of competent jurisdiction.**

31. **Article and Paragraph Headings**. The Section headings herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of a provision of this Lease.

32. **Entire Agreement**. This Lease shall constitute the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes all other prior writings, negotiations and understandings.

33. **Effect of Termination**. Any termination of this Lease pursuant to the terms hereof shall not relieve either Party from any liabilities, obligations or indemnities arising prior to the effective date of such termination.

34. **Time of Essence**. Time is of the essence regarding each provision of this Lease.

35. **No Waiver**. No waiver by either Party of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by the other Party.

36. **Counterparts**. This Lease may be executed in counterparts.

37. **Ownership of Improvements**. The Improvements shall not be deemed to be permanent fixtures (even if permanently affixed to the Leased Premises) and shall be and remain the sole property of Lessee. Within the ninety (90) day period after receipt by Mortgagee of a notice that the Lease has been terminated prior to the expiration date (or such longer time as may be reasonably necessary to remove the Improvements from the Leased Premises), Mortgagee, may remove the Improvements from the Leased Premises, provided that Mortgagee complies with all requirements of Lessee set forth in the Lease related to Restoration.

38. **Recording of Memorandum**. Concurrent with the execution of this Lease, the Parties shall execute, acknowledge and record in the land records office for Warren County, Iowa, a memorandum of this Lease in the form attached as Exhibit 2, hereto.

39. **No Partnership**. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

40. **Brokerage Commissions**. Lessor and Lessee each represent that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission or finder's fee in connection with this Lease. Lessor and Lessee shall indemnify, defend and hold the other Party harmless from and against any claim for any brokerage commissions or finder's fees claimed to be due and owing by reason of the indemnifying Party's activities.

41. **Taxes on Lease**. If any governmental authority levies, assesses, and/or imposes on Lessor a transfer tax as a result of this Lease, Lessor shall timely pay such tax and Lessee shall reimburse the same to Lessor.

42. **Forfeiture of Leased Premises**. If at any time the Leased Premises or any part thereof shall then be subject to forfeiture, or if Lessor shall be subject to any liability arising out of the nonpayment of real property or personal property taxes that are the responsibility of Lessor hereunder, Lessee may, in its sole and absolute discretion, following the expiration of ten (10) business days' advance notice to Lessor and Lessor's failure to remedy the outstanding tax liability within such ten (10) business day period, notwithstanding any pending contest or review, elect to either pay such taxes or post such bonds as the taxing authority may require to prevent such forfeiture or liability and may offset the amount of such payments from amounts due Lessor under this Lease. Notwithstanding the foregoing, in the event Lessee pays such taxes or posts such bonds during a pending contest or review and Lessor subsequently prevails over the taxing authority, Lessee shall pay Lessor any amounts previously offset under the foregoing sentence if such amounts have been reimbursed to Lessee by the taxing authority.

43. **Governmental Immunity**. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to waive any defense of Governmental Immunity available to Lessor under Iowa Code chapter 670 as it now exists or may be amended from time-to-time. "Governmental Immunity" as used herein shall include all defenses available to Lessor under Iowa Code chapter 670. Nothing in this Agreement shall be construed to waive any other source of sovereign immunity or similar exemption from or limitation on liability available to Lessor.

44. **City and County Ordinances, Zoning and Permit Requirements**. Lessee shall comply with all ordinances, zoning and permit requirements of the City of Indianola, Iowa, and Warren County, Iowa, as applicable, and nothing in this Agreement shall be deemed a waiver of such ordinances, zoning and permit requirements. Furthermore, as provided in such ordinances, zoning and permit requirements, Lessee shall defend, indemnify, and hold harmless the City of Indianola and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever including attorney fees arising out of the actions or omissions of Lessee or Lessee's contractors or contracted operator concerning the construction or operation of the solar energy facility without limitation, whether said liability is premised on contract or tort. Lessee's submittal for a building permit for a solar energy system shall constitute Lessee's consent and agreement to the above terms.

**(Signatures on Following Page)**

**IN WITNESS WHEREOF**, the Parties have executed this Lease to be effective as of the Effective Date.

| **LESSOR** | **LESSEE** |
|---|---|
| **INDIANOLA MUNICIPAL UTILITIES** | **SE MUNICIPAL IOWA, LLC**,<br>a Nebraska limited liability company |
| By: _____________________________ | By: _____________________________<br>Eric G. Johnson, President |
| Print name:_______________________ | Date: ____________________________ |
| Title: ___________________________ | |
| Date: ___________________________ | |
| By: _____________________________ | |
| Print name:_______________________ | |
| Title: ___________________________ | |
| Date: ___________________________ | |

**EXHIBIT 1-A TO LEASE AND EASEMENT AGREEMENT**
**DESCRIPTION OF THE REAL PROPERTY**

The land referred to herein below is situated in Warren County, Iowa:

[Legal description to be supplemented upon the mutual consent of Lessor and Lessee]

**<u>EXHIBIT 1-B TO LEASE AND EASEMENT AGREEMENT</u>**
**DESCRIPTION OF THE LEASED PREMISES**

[TO BE INSERTED PURSUANT TO SECTION 2.4 OF LEASE]

**EXHIBIT 2 TO LEASE AND EASEMENT AGREEMENT**
**FORM OF MEMORANDUM OF LEASE**

**[Follows this page.]**

## RECORDER'S COVER SHEET

Name of Document: Memorandum of Lease and Easement Agreement for Solar Energy System

Preparer Information:

Michael D. Sands
Baird Holm LLP
1700 Farnam Street; Suite 1500
Omaha, NE 68102

Taxpayer Information (name and complete address):

Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Return Document to:

SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

**Lessor(s):** Indianola Municipal Utilities

**Lessee:** SE Municipal Iowa, LLC, a Nebraska limited liability company

**Legal Description:** See Exhibit A

**MEMORANDUM OF LEASE AND EASEMENT AGREEMENT**
**FOR SOLAR ENERGY SYSTEM**

This Memorandum of Lease and Easement Agreement for Solar Energy System ("**Memorandum**") is made and dated as of ______________, 20_ ("**Effective Date**") by and **Indianola Municipal Utilities** ("**Lessor**") and **SE Municipal Iowa, LLC**, a Nebraska limited liability company ("**Lessee**"), in light of the following facts and circumstances:

Lessor and Lessee entered in that certain Lease and Easement Agreement for Solar Energy System, of even date herewith (the "**Lease**"), pursuant to which Lessor has leased to Lessee certain real property of Lessor ("**Leased Premises**") located in Warren County, Iowa, as more particularly described on the attached Exhibit A and which said Exhibit A is hereby incorporated herein. Lessor and Lessee have executed and acknowledged this Memorandum for the purpose of complying with Section 564A.7, et al., of the Iowa Code and to provide constructive notice of the Lease. Capitalized terms not otherwise defined in this Memorandum shall have the meanings provided in the Lease.

NOW THEREFORE, Lessor and Lessee hereby agree as follows:

**1. Lease of Leased Premises; Easements**. Lessor has granted and leased the Leased Premises to Lessee on the terms, covenants and conditions stated in the Lease. The Lease is solely and exclusively for the development and operation of a solar energy project, and Lessee shall have the exclusive right to use the Leased Premises for such purposes, together with certain related sun non-obstruction, effects, access, and transmission easements, as more fully granted and described in the Lease. Reference is hereby made to the Lease for a complete description of the respective rights and obligations of the parties regarding the Leased Premises and the covenants, conditions, restrictions and easements affecting the Leased Premises pursuant to the Lease. With respect to the sun non-obstruction easement, Lessor and Lessee acknowledge that, as of the Effective Date, the Project is still in the conceptual stages and the configuration and siting of the Improvements has not been finalized. Accordingly, at this time Lessee is unable to provide, in accordance with Section 564A.7 of the Iowa Code, a legal description of the space which must remain unobstructed expressed in terms of the degrees of the vertical and horizontal angles through which the sun non-obstruction easement extends over the Leased Premises and the points from which these angles are measured. In relation thereto, within a reasonable time following substantial completion of the Project, if applicable and provided the Leased Premises remains a part of the Project, Lessee shall provide Lessor with written notice describing the aforementioned information with respect to the sun non-obstruction easement granted hereunder, and such notice shall be made part of and incorporated by the Lease, in accordance with and satisfaction of Section 564A.7 of the Iowa Code.

**2. Term**.

Development Term. The initial period of this Lease, during which Lessee shall conduct development and construction activities shall commence on the Effective Date and shall continue until the "**Commercial Operations Date**," as defined under the power purchase agreement (the "**PPA**") entered into between Lessor and Lessee, unless sooner terminated in accordance with the Lease ("**Development Term**"). The Commercial Operations Date shall occur no later than the "Guaranteed Commercial Operations Date," as defined in the PPA.

Operations Term. The second period of this Lease, if any, during which Lessee shall conduct Solar Operations, shall commence upon the expiration of the Development Term following the Commercial Operations Date and shall continue for a period which ends at 12:59:59 p.m. on the date which is twenty-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs ("**Operations Term**") unless sooner terminated in accordance with the provisions hereof, with two (2) options to extend held by Lessee for five (5) years each; provided that Lessee shall only have the right to extend the Operations Term, as provided above, if: (i) the Improvements remain operational with respect to photovoltaic energy conversion and generation of electricity from sunlight, at the time of such election(s); and (ii) Lessor has the right and option to extend the term of the PPA for [a] period(s) equal to that of the extended term(s) of the Lease, as provided in the PPA.

**3**. **Ownership**. Lessor shall have no ownership or other interest in any Improvements (as defined in the Lease) installed on the Leased Premises.

**4.** **Assignment**. The Lease provides, among other things, that Lessee and any Assignee shall have the right to sell, convey, lease, assign, mortgage, encumber or transfer to one or more assignees or mortgagees the Lease, or any right or interest in the Lease, or any or all right or interest of Lessee in the Leased Premises, or any portion thereof, or in any or all of the Improvements that Lessee or any other party may now or hereafter install on the Leased Premises, to: (i) any entity that is wholly-owned by Sandhills Energy, LLC, a Nebraska limited liability company; or (ii) as part of the "Financing Documents" (as defined in the PPA), without the prior consent of Lessor. All other such conveyance shall require the prior written consent of Lessor.

**5.** **Successors and Assigns**. This Memorandum and the Lease shall burden the Leased Premises and shall run with the land. The Lease and this Memorandum shall inure to the benefit of and be binding upon Lessor and Lessee and, to the extent provided in any assignment or other transfer under the Lease, any assignee or Mortgagee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

**6.** **No Conflict**. In the event of any conflict or inconsistency between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. Nothing in this Memorandum shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Lease or otherwise limit or expand the rights and obligations of the parties under the Lease and the Lease shall control over this Memorandum in all events.

**7.** **Multiple Counterparts.** This Memorandum may be executed by different parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall constitute one and the same instrument.

[Signatures on following page(s)]

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum as of the Effective Date.

**LESSOR**:

**INDIANOLA MUNICIPAL UTILITIES**

By:______________________________
Name:_________________________
Its:  _____________________________

STATE OF IOWA )
) ss.
COUNTY OF ___________ )

Before me, _______________________________, the undersigned notary public in and for this state, on this ____ day of _________________________, ______, personally appeared ________________ ______________ as _________________ of Indianola Municipal Utilities, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said entity and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

______________________________________________
Notary Public

(SEAL)

**LESSEE**:

**SE MUNICIPAL IOWA, LLC**,
a Nebraska limited liability company

By: ______________________________
Eric G. Johnson, President

STATE OF _____________ )
) ss.
COUNTY OF___________ )

Before me, ______________________________, the undersigned notary public in and for this state, on this ____ day of _________________________, ______, personally appeared Eric G. Johnson, as President of SE Municipal Iowa, LLC, a Nebraska limited liability company, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said limited liability company and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_______________________________________________
Notary Public

(SEAL)

**<u>EXHIBIT A TO MEMORANDUM OF LEASE</u>**
**DESCRIPTION OF LEASED PREMISES**

The land referred to herein below is situated in Warren County, Iowa:

[Legal description to be supplemented upon the mutual consent of Lessor and Lessee]

**INDIANOLA, IOWA**

# LEASE AND EASEMENT AGREEMENT
# FOR SOLAR ENERGY SYSTEM

# LEASE AND EASEMENT AGREEMENT FOR SOLAR ENERGY SYSTEM

**This Lease and Easement Agreement for Solar Energy System** (this "**Lease**") is entered into to be effective as of the date fully executed by all parties hereto ("**Effective Date**") by and between **Indianola~~,~~** ~~Iowa~~ **Municipal Utilities** ("**Lessor**") and **SE Municipal Iowa, LLC**, a Nebraska limited liability company ("**Lessee**"). Lessee and Lessor are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

## BACKGROUND

A. Lessor is the owner of fee title to that real property located in Warren County, Iowa, described and identified in Exhibit "1-A" attached hereto and incorporated herein by this reference ("**Real Property**").

B. Lessee desires to lease all or part of the Real Property (such leased portion being referred to as the "**Leased Premises**") for the location and operations of solar energy generation and transmission and related facilities thereon ("**Solar Operations**") and Lessor desires to lease the Leased Premises to Lessee for that use; provided that the Parties agree that the Leased Premises shall not encompass any area within twelve (12) feet of any above ground or underground infrastructure, improvements, or facilities of Lessor located on the Real Property or adjacent thereto, which existed as of the Effective Date.

C. Lessor further desires to grant Lessee, and Lessee desires to accept from Lessor, various easements over, under and across the Leased Premises in relation to the Solar Operations.

**NOW THEREFORE,** for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Grant of Lease**. Lessor does hereby grant to Lessee, and Lessee does hereby accept, a lease for exclusive use by Lessee of the Leased Premises, on the terms and conditions hereinafter set forth.

2. **Use of Leased Premises by Lessee**.

2.1 Permitted Uses. This Lease is for use of the Leased Premises for solar energy collection and conversion, for generation and transmission of electric power and for all reasonably related and incidental purposes and activities (collectively, "**Operations**"), in accordance with all of the terms of this Lease, with Lessee deriving all profit therefrom, and including, without limitation:

(a) conducting studies of solar radiation, solar energy, soils, and other meteorological and geotechnical data;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic electric energy generation, including without limitation, existing and/or future technologies used or useful in connection with photovoltaic energy conversion and generation of electricity from sunlight, and associated support structure, braces, wiring, plumbing, and related equipment ("**Solar Energy Facilities**"), (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, cross-arms, guy lines, anchors, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) interconnection and/or switching facilities and electric transformers and transformer pads, (v) energy storage facilities, (vi) meteorological towers and solar energy measurement equipment, (vii) control buildings, control boxes and computer monitoring hardware, (viii) utility installation, (ix) safety protection facilities, (x) maintenance yards, (xi) roads and erosion control facilities, (xii) signs and fences, and (xiii) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity generated on the Leased Premises (all of the foregoing, including the Solar Energy Facilities, collectively the "**Improvements**");

(c) subject to Section 3.1 and Section 20.2 herein, and only to the extent such rights are vested in Lessor as the owner of the Real Property, (i) reasonably removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant or other vegetation; (ii) reasonably dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence or other object constructed subsequent to the Effective Date of this Lease, on or that intrudes (or upon maturity could intrude) into the Leased Premises that could obstruct, interfere with or impair the Improvements or the use of the Leased Premises intended by Lessee hereunder; (iii) excavating, grading, leveling and otherwise modifying the land; and (iv) undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes. Notwithstanding the foregoing, if Lessee uses chemicals to control vegetation on an area of the Leased Premises that is close in proximity to a water source, Lessor may, upon written notice to Lessee, prohibit the use of chemicals that pose a risk of contaminating the water source.

2.2 Additional Uses. The Parties acknowledge and agree that solar energy technologies are improving at a rapid rate and that it is probable that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Leased Premises, entirely or in part, with newer model or design Solar Energy Facilities, in Lessee's sole discretion and at Lessee's sole cost and expense. Any such replacements undertaken by Lessee shall not act to (i) modify or extend the Term of this Lease, (ii) modify the terms or any obligations of the Parties under the PPA, or (iii) otherwise alter the rights and obligations of the Parties under this Lease.

2.3 Exclusive Use. Lessee shall have the sole and exclusive right to collect and convert all of the solar resources of, and to conduct Operations on, the Leased Premises. Lessor shall not grant any rights in the Leased Premises purporting to permit others to conduct Operations or any activity or use that may interfere with the Lessee's Operations on the Leased Premises in derogation of Lessee's sole and exclusive rights on the Leased Premises. For as long as the PPA is in effect, the output of the Solar Energy Facilities on the Leased Premises shall be sold exclusively to Lessor under the PPA, it being agreed that the sales to Lessor under the PPA are part of the consideration for this Lease and without the PPA Lessor would not enter into this Lease.

2.4 Leased Premises; Alteration of Boundaries. Prior to constructing any permanently-affixed Improvements, Lessee shall obtain a survey of the Real Property, or portion thereof for which Lessee desires to utilize as the Leased Premises, and shall provide Lessor with a copy of the same. Subject to alterations by Lessor as provided below, the boundaries provided on the survey shall thenceforth constitute the Leased Premises and shall automatically be incorporated herein as Exhibit "1-B", attached hereto. Any portions of the Real Property not included within the boundaries of the Leased Premises shown on the survey shall be released from the terms and obligations of this Lease. Upon Lessor's receipt of the survey, Lessor shall have thirty (30) days to identify, via written notice to Lessee, a specific area (or areas) of the Real Property for which Lessor wishes to exclude from the Leased Premises due to Lessor's utilization of the same for a use that existed prior to the full execution of this Lease. If Lessor provides such notice within the time period prescribed above, and subject to the limitations set forth below, Lessee shall plot the revised boundaries of the Leased Premises on the survey to reflect the exclusion of the of the area(s) identified by Lessor, and such revised boundaries shall thereafter constitute the Leased Premises and shall automatically be incorporated herein as Exhibit "1-B", attached hereto. Notwithstanding the foregoing, under no circumstances shall the areas excluded from the Real Property result in: (i) a reduction of the area of the Leased Premises to less than what is required for Lessee's intended Operations related to the generation of solar energy; (ii) a reduction in the Solar Energy Facilities' ability to generate solar energy; (iii) a material increase in the costs of Lessee's Operations; or (iv) an increase in the commercial risks or regulatory barriers related to Lessee's Operations. If Lessee determines, in its sole and reasonable discretion, that Lessor's requested exclusions is likely to result in one or more of the above prohibited factors, Lessee shall only be obligated to revise the boundaries of the Leased Premises to the extent that such revisions are unlikely to result in the occurrence of the above factors. Unless and until the boundaries of the Leased Premises are revised pursuant to the terms of this Section 2.4, all of the Real Property shall constitute the Leased Premises. If Lessor fails to timely request alteration of the boundaries of the Leased Premises pursuant to the terms of this Section 2.4, Lessor's rights with respect thereto shall be deemed waived. If the boundaries of the Leased Premises established under this Section 2.4 differ from those of the Real Property, the Parties shall execute and file an amendment to the memorandum of this Lease, as set forth in Section 38 of this Lease, within thirty (30) days after finalizing the alterations, at Lessee's sole expense.

2.5 Commercial Operations Date. Lessee intends to install Solar Power Facilities on the Leased Premises consisting of such facilities, equipment and related improvements permitted under this Lease. The precise location on the Leased Premises and timing of such installation shall be determined by Lessee; provided that siting of Improvements shall comply with applicable Iowa law. The date of commencement of Operations shall be referred to herein as the **"Commercial Operations Date"**. The Commercial Operations Date shall have the same meaning and be the same date as the "Commercial Operations Date", as defined under the power purchase agreement (the "**PPA**") entered into between Lessor and Lessee, such term and related provisions of the PPA being incorporated herein by this reference. Lessee represents and warrants that, unless otherwise agreed to in writing between Lessor and Lessee, the Commercial Operations Date shall occur no later than the "Guaranteed Commercial Operations Date", as defined in the PPA.

2.6 Lessor's Access. If Lessee's Operations result in the complete inability of Lessor to access (from any existing public right-of-way or private roadway to which Lessor has legal access) a part of the Leased Premises or land owned by Lessor adjacent to the Leased Premises, Lessee shall at its sole cost and expense, provide Lessor reasonable access to such land in a timely manner. Notwithstanding the foregoing, the Parties anticipate that Lessee may construct a fence encompassing both the Leased Premises and other portions of the Real Property, in which case Lessee shall provide Lessor a key to the fence gate so that Lessor may, at all times, access the Real Property. Lessee and Lessor agree to cooperate with each other in good faith to establish the location of any such access points, and under no circumstance shall Lessor's right of access diminish or interfere with Lessee's rights under this Lease

3. **Grant of Easements**. Lessor grants to Lessee, and Lessee accepts from Lessor, for the Term referenced in Section 4, the following easements over and across the Leased Premises in accordance with the terms and conditions of this Lease. The following easements are for the benefit of Lessee and Lessee's agents, contractors, employees and assigns; are located on the Leased Premises; and are collectively referred to as the "**Easements**".

3.1 Sun Non-Obstruction Easement. Lessor grants Lessee an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Leased Premises; provided such easement shall only apply to the Real Property and conditions thereon, and not adjacent parcels that Lessor does not legally own or control; and further provided that said easement shall not apply or be in effect until such time as the requirements of Section 564A.7 of the Iowa Code are satisfied at Lessee's expense. Lessor shall not engage in any activity on the Leased Premises or any other neighboring property owned by Lessor that materially interferes with the sunlight direction over any portion of Leased Premises; cause a decrease in the output or efficiency of any Solar Energy Facilities; or otherwise materially interfere with Lessee's operation of the Project or exercise of any rights granted in this Lease (collectively "**Interference**"). Normal farm and water treatment operations on neighboring properties that do not obstruct sunlight on a continuous basis shall not constitute Interference. Existing man-made improvements on the Leased Premises or on neighboring or adjoining properties owned by Lessor have been reviewed by Lessee prior to the Effective Date and the Parties agree that such improvements do not constitute Interference. Lessor retains the right to remove, replace, and expand any of such improvements if the replacement or expansion does not change the obstruction of sunlight caused by the existing improvements. If a question exists as to whether a potential replacement or expansion of such improvements by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the potential replacement or expansion. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed replacement or expansion would likely interfere with the rights of Lessee in the manner(s) prohibited hereunder. Lessor and Lessee acknowledge that, as of the Effective Date, the Project (defined below) is still in the conceptual stages and the configuration and siting of the Improvements has not been finalized. Accordingly, at this time Lessee is unable to provide, in accordance with Section 564A.7 of the Iowa Code, a legal description of the space which must remain unobstructed expressed in terms of the degrees of the vertical and horizontal angles through which the sun non-obstruction easement extends over the Leased Premises and the points from which these angles are measured. In relation thereto, within a reasonable time following substantial completion of the Project, if applicable and provided the Leased Premises remains a part of the Project, Lessee shall provide Lessor with written notice describing the aforementioned information with respect to the sun non-obstruction easement granted hereunder, and such notice shall be made part of and incorporated by this Lease via this reference, in accordance with and satisfaction of Section 564A.7 of the Iowa Code.

3.2 ~~3.1~~ Effects Easement. To the extent permitted by law and within Lessor's rights and control as owner of the Real Property, Lessor grants to Lessee an easement over the Leased Premises for visual, glare, shadow, and such other effects attributable to the normal and customary operation of the Project located on the Leased Premises. Such easement(s) shall not permit Lessee to create conditions which are considered, under the law, to be nuisances on the Leased Premises, and shall not be used as a defense ~~or~~to any claims of nuisance or similar claims, or as the basis of a claim of indemnity ~~with respect to the same~~against Lessor, or as a defense against a claim of indemnity by Lessor.

3.3 ~~3.2~~ Access Easement. Lessor grants to Lessee an easement for ingress to and egress from the Solar Energy Facilities over and across the Leased Premises by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Leased Premises from time to time, for the benefit of and for purposes incidental to Operations on the Leased Premises and to the Improvements. Lessor shall not be responsible for any construction, reconstruction, replacement, repair or maintenance of any improvements located within the Leased Premises, and Lessee shall hereby be responsible and liable for any damage caused by Lessee or Lessee's Agents to any property (including any roadway or other improvements thereon) adjacent to the Leased Premises.

3.4 ~~3.3~~ Transmission Easement. Subject to Lessee's compliance with all zoning and permitting requirements, Lessor grants Lessee an easement for the right to (i) install and maintain on the Leased Premises transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Leased Premises, and (ii) install and maintain on the Leased Premises communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Leased Premises.

The Improvements and Lessee's uses of the Leased Premises permitted under Section 2 and Section 3 of this Lease are hereinafter sometimes referred to as the "**Project**."

4. **Lease and Easement Term**.

4.1 Development Term. The initial period of this Lease, during which Lessee shall conduct development and construction activities shall commence on the Effective Date and shall continue until the Commercial Operations Date, unless sooner terminated in accordance with the provisions hereof, and subject to extension based on Force Majeure under the PPA ("**Development Term**").

4.2 Operations Term. The second period of this Lease, if any, during which Lessee may complete development and shall conduct Solar Operations, shall commence upon the expiration of the Development Term and shall continue for a period ~~of~~which ends at 12:59:59 p.m. on the date which is twenty ~~-~~-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs ("**Operations Term**") unless sooner terminated or extended in accordance with the provisions hereof. Lessee shall have the exclusive right to extend the Operations Term of this Lease for two (2) consecutive terms of five (5) years each in accordance with the terms and provisions of this Lease (singularly, the "**Extended Operations Term**" and collectively, the "**Extended Operations Terms**") by providing written notice to Lessor of Lessee's intent to extend the Operations Term at least ~~one~~two hundred ~~eighty~~forty (~~180~~240) days prior to the end of the initial Operations Term; provided that Lessee shall only have the right to extend the Operations Term, as provided above, if: (i) the Improvements remain operational with respect to photovoltaic energy conversion and generation of electricity from sunlight, at the time of such election(s); and (ii) Lessor has the right and option to extend the term of the PPA for [a] period(s) equal to that of the Extended Operation Term(s), as provided in the PPA. In relation to the foregoing, if Lessor elects to extend the PPA, the terms of this Lease shall continue and remain unchanged for as long as the PPA remains in effect. If Lessor does not elect to extend the PPA, and Lessee wishes to extend this Lease via election of the Extended Operations Term(s) as provided above, Lessee may do so, provided that: (x) prior to the commencement of the applicable Extended Operations Term, the Parties shall engage a mutually agreeable third-party appraiser, at Lessee's sole cost and expense, to determine the fair market annual rental value of the Leased Premises based upon its use for photovoltaic energy conversion and generation of electricity from sunlight (the "**Extended Term Rent**"); (y) on or before the commencement date of the applicable Extended Operations Term, Lessee shall pay to Lessor the Extended Term Rent; and (z) on or before each anniversary of said date thereafter, Lessee shall pay to Lessor the Extended Term Rent, plus a two percent (2%) increase over the prior annual installment thereof, for the remainder of the Extended Operations Term(s). Upon any extension of this Lease via an election by Lessee as provided above in which Lessor duly-elects to extend the PPA, prior to commencement of the applicable Extended Operations Term Lessor and Lessee shall extend the generator interconnection agreement entered into between the Parties during the Operations Term upon the same terms, in relation to Lessee's Operations on the Leased Premises during the duration of the Extended Operations Term(s). Upon any extension of this Lease via an election by Lessee as provided above in which Lessor does not elect to extend the PPA, prior to the commencement of the applicable Extended Operations Term Lessor and Lessee shall enter into a new generator interconnection agreement upon mutually agreeable terms, in relation to Lessee's Operations on the Leased Premises during the duration of the Extended Operations Term(s). Each Extended Operations Term shall begin on the expiration date of the initial Operations Term or previous Extended Operations Term, as the case may be. The Development Term, the Operations Term, and the Extended Operations Terms (if applicable) are collectively referred to herein as the "**Term**". Each one year period commencing on the Effective Date (hereinafter defined) and on each anniversary of the Effective Date during the Term shall be referred to herein as a "**Lease Year**".

4.3 Limitations on Term. ~~Notwithstanding anything to the contrary in this Lease, in~~In the event the PPA is terminated in accordance with the terms of the PPA, including but not limited to Section 3.03 of the PPA, or due ~~solely~~ to Lessee's uncured and uncontested default ~~thereunder~~under the PPA, the Term of this Lease shall end automatically on the date of the PPA's termination; provided that the foregoing shall exclude instances in which Lessee elects to extend the Term of this Lease and Lessor does not elect to extend the term of the PPA, all in accordance with Section 4.2 above, in which case this Lease shall remain in full force and effect during the Extended Operations Term(s) despite such termination or expiration of the PPA. Further, notwithstanding anything to the contrary in the Lease, in no event shall the Term of this Lease be longer than the longest period permitted by applicable law; accordingly, Lessor and Lessee agree that with respect to any time limitations set forth under Iowa law, the length of the Development Term, the Operations Term, and the Extended Operations Terms shall each be treated and measured independent of each other. Further, Lessor and Lessee agree that the limitations set forth under Article I, Section 24 of the Iowa Constitution shall not apply to this Lease and the uses hereunder, as this Lessee's use of the Leased Premises under this Lease are not of an agricultural nature.

5. **Ownership and Operation of the Improvements**.

5.1 Title. Title to the Improvements has been and is reserved to Lessee and remains the sole property of Lessee. Lessee may add or remove all or any portion of the Improvements at any time during the Term, irrespective of the manner or method of attachment of the same to the Leased Premises, provided same is accomplished in accordance with applicable laws. During the Term, Lessor shall have no ownership or other interest in any component of the Improvements or any tax credits or tax exemptions attributable to the Improvements or the electric energy, capacity or other generator-based products produced therefrom, whether in effect as of the Effective Date or as may come into effect in the future. For the avoidance of doubt, Lessee's right to benefit from any such tax credits or tax exemptions relating to Lessee's Improvements, existing or in the future, shall be superior to Lessor's. Notwithstanding the foregoing, any terms to the contrary in the PPA regarding ownership and/or entitlements with respect to the foregoing shall supersede and control while the PPA is in effect. Additionally, any such entitlements which, by law, are required to be passed through to the end users of the electric energy generated by the Project (i.e., Lessor) shall be excluded from the foregoing and be the property of Lessor while the PPA is in effect. If, under future laws, Lessee or any other holder of a leasehold interest in this Lease becomes ineligible for any tax credits or tax exemptions resulting from the operation of the Improvements or the solar energy generated therefrom, Lessor shall use commercially reasonable efforts to assist Lessee in the amendment of this Lease or replacement of this Lease with a different instrument acceptable to Lessor, in Lessor's commercially reasonable discretion (which discretion shall include but not be limited to Lessor's ability to obtain the approval of any lender of Lessor with a security interest in the Leased Premises), so as to convert Lessee's interest in the Leased Premises to a substantially similar interest that makes Lessee or any other holder of a leasehold interest in this Lease eligible for such tax credits or tax exemptions; *provided, however*, that such Lease amendment or replacement instrument does not: (a) directly or indirectly increase Lessor's obligations identified in this Lease; (b) decrease the value of the Leased Premises; (c) decrease Lessor's rights under this Lease; (d) limit Lessor's ability to obtain financing in the future for the Leased Premises upon terms that are reasonably acceptable to Lessor; (e) increase the amount of Lessor's real property taxes; (f) otherwise decrease the value of the benefits received by Lessor under this Lease; and/or (g) decrease the value of Lessor's reversionary interest in the Leased Premises following the expiration of the Term, as amended, or at the end of the term of the replacement instrument. Lessee shall reimburse Lessor for all reasonable and documented out-of-pocket expenses up to Five Thousand Dollars ($5,000.00) incurred by Lessor in assisting Lessee in obtaining the Lease amendment or replacement instrument, including, but not limited to, attorneys' fees. For purposes of this Section 5.1 only, the term "Lessee" shall include all direct and indirect owners and affiliates of Lessee. Notwithstanding the terms of this Section 5.1, the

Parties acknowledge that Lessor may be entitled to certain other interests and attributes of the Project, as may be set forth in the PPA, or such other agreements concerning the Project (the PPA and such other agreements collectively being referred to herein as the "**Project Agreements**"), entered into between Lessor and Lessee. In accordance therewith, this Section 5.1 shall not be construed to prohibit, limit, cancel or reduce Lessor's rights and entitlements under the Project Agreements; provided the same does not conflict with or diminish Lessee's rights as to the ownership of the Improvements and tax credits or tax exemptions under this Section 5.1, unless agreed to by Lessee in writing.

5.2 Operation of Improvements. The manner of operation of the Improvements, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee. Notwithstanding the foregoing, Lessee at all times and at its sole cost and expense shall ensure that the Leased Premises and the Improvements are maintained and operated in accordance with prudent industry practices in place from time to time and in compliance with all applicable laws, governmental authorities, insurance underwriters, mortgages, deeds of trust, and covenants, conditions, and restrictions pertaining to the Leased Premises and the Improvements. During the construction and operation of the Improvements, Lessee shall take reasonably prudent measures to control and mitigate soil erosion on the Leased Premises.

6. **Permits and Governmental Approvals**. Lessee shall be responsible for obtaining at its sole cost and expense from any governmental agency or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights that are necessary in connection with the Project or the Operations; and Lessor shall, upon Lessee's request, execute, and, if appropriate, cause to be acknowledged and recorded, any application, document or instrument (including any variance, encroachment agreement or setback waiver) that is reasonably requested by Lessee in connection therewith. Such documents shall be in the form required by state or local government(s). Lessor shall cooperate with Lessee as necessary to obtain any governmental approvals related to use of Leased Premises for the purposes stated in this Lease at no cost or expense to Lessor. Lessee shall reimburse Lessor for its out-of-pocket expenses incurred in connection with such cooperation within ten (10) days after Lessee's receipt of a written request for such payment.

7. **No Rent**. Except as otherwise explicitly set forth in this Lease or the PPA, Lessee shall have no obligations with respect to the payment of rent or other amounts to Lessor in exchange for Lessee's use and/or occupancy of the Leased Premises as provided under this Lease. The Parties acknowledge and agree that this Lease is entered into in consideration of the benefits to the Parties derived from the Project, as more specifically set forth in the PPA, the receipt and sufficiency of which is hereby acknowledged by the Parties.

8. **Payment of Taxes**. Lessee shall pay any and all general real property taxes or personal property taxes levied on the Leased Premises and the Improvements that are directly attributable to the Operations and any solar energy conversion equipment installed by Lessee on the Leased Premises, including any increases in the ad valorem property taxes levied against the Leased Premises that are assessed for the period from and after the Effective Date until the end of the Term hereof and are directly attributable to Improvements installed by Lessee and the change in Property's use; provided, however, such obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or any interest or penalties thereon ("**Lessee's Taxes**"). Such Lessee's Taxes shall include any increase in taxes (or decrease in state property tax credits) due to: (i) a change in zoning classification of the Leased Premises or any other portion of the Lessor's real estate as a result of the Lessee's operations; (ii) a change in the classification of the Leased Premises or any other portion of the Lessor's real estate as agricultural or horticultural land for state property tax purposes; and (iii) the loss or partial loss of any municipal or governmental exemption to state property taxes due to the Lease of the Leased Premises for commercial operations. Lessee's responsibility for payment of taxes shall apply even if the Improvements, or a portion thereof, become subject to a replacement tax pursuant to Chapter 437A of the Iowa Code, as amended. Lessee shall have the right, at its sole expense, to appeal or contest any such increase it could be responsible to pay under this Lease and to compromise and settle the same, and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so. Lessor shall deliver to Lessee copies of all real property tax bills within thirty (30) days after receipt of the bill by Lessor from the taxing authority and Lessee shall pay Lessee's Taxes on or before the date payment is delinquent. Lessee shall be responsible for any penalties and/or interest that may be due on the Lessee's Taxes as a result of the failure of Lessee to timely make such payments. If the Leased Premises are currently eligible, or become eligible, for an exemption from property taxes under applicable law, Lessor agrees that it will take reasonable actions to maintain, renew or obtain such exempt status, if possible to do so. The reasonable and documented out-of-pocket costs to do so shall be the responsibility of Lessee.

9. **Utilities**. Lessee shall be solely responsible for obtaining and paying for all utilities needed or used by Lessee on the Leased Premises, including any costs associated with establishing utility service. Lessor will not be liable for damages for any interruption in the availability of any utility or service. Such unavailability will not constitute an eviction or a disturbance of Lessee's use and possession of the Leased Premises or relieve Lessee from performing any of Lessee's obligations under this Lease. Lessor shall use commercially reasonable efforts to cooperate with Lessee in Lessee's efforts to obtain utility service to and from the Leased Premises.

10. **Liens**. Lessor and Lessee shall keep the other's interest in the Leased Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment furnished in connection with Lessor's or Lessee's (as applicable) ownership or use of the Leased Premises, subject to Lessor's and Lessee's (as applicable) right to contest such liens and claims. If Lessor or Lessee (as applicable) wishes to contest any such liens or claims, such Party shall, within forty-five (45) days after it receives notice of such lien or claim, provide a bond or other security as the other Party may reasonably request, or remove any such liens from the Leased Premises pursuant to applicable law.

11. **Maintenance of Leased Premises; Liability Waiver**.

11.1 Maintenance. Throughout the term of this Lease, Lessee shall, at Lessee's sole cost and expense, maintain the Improvements and all of the Leased Premises in good and clean condition and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies, including the orderly maintenance and upkeep of all vegetation, grass, and shrubs under the Improvements. Lessee shall not unreasonably clutter the Leased Premises and shall collect and dispose of any and all of Lessee's refuse and trash. If Lessor or Lessee discovers noxious weeds on the Leased Premises during the Term or receives notice from a governmental authority with jurisdiction thereover that noxious weeds are present on the Leased Premises, Lessee will undertake all reasonable measures to control such weeds and comply with all directives of any governmental authority with jurisdiction thereover.

11.2 Failure to Comply. If Lessee fails to comply with any obligation of Lessee under this Section 11, after Lessor has given Lessee at least forty-five (45) days prior written notice of such failure (except in event of emergency need for immediate action), Lessor shall have the right, in addition to remedies under paragraph 18 below, but not the obligation to take such measures to correct the noticed failure as Lessor deems necessary, in its reasonable discretion, and charge the reasonable cost and expense thereof to Lessee within forty-five (45) days.

12. **Security; Lessor's Access**. All security measures reasonably necessary to protect against damage or destruction of Lessee's Improvements, or injury or damage to persons or property on the Leased Premises, or the Operations, shall be provided by Lessee on the Leased Premises, including, if reasonably necessary, warning signs, closed and locked gates, and other measures appropriate and reasonable. Lessor may access any part of the Leased Premises that is within Lessee's secured areas for the purpose of inspection of activities thereon upon twenty-four (24) hours' notice to Lessee, except in case of emergency, when no advance notice shall be required, provided that such access shall comply with Lessee's safety requirements and shall not in any manner interfere with Lessee's Operations nor violate applicable laws or governmental regulations.

13. **Insurance**. At all times during which Lessee is conducting any activities on the Leased Premises, and at all times during the Term of this Lease, Lessee shall, at its own cost and expense, obtain and maintain in effect coverage limits attributable to the Leased Premises under (a) commercial general liability insurance, with bodily injury and property damage coverage of at least One Million Dollars ($1,000,000) per occurrence and Four Million Dollars ($4,000,000) in the aggregate, (b) workers' compensation or employers' liability insurance in the amount required by Iowa law and (c) automobile liability insurance of at least One Million Dollars ($1,000,000) per accident. Lessor shall be provided with additional insured status on all polices of such insurance, excluding those for workers' compensation or employers' liability. Lessee shall provide to Lessor a certificate evidencing such coverage. The foregoing requirements may be satisfied by combination of general liability and umbrella/excess liability policies. The insurance provided by Lessee shall be primary and non-contributing for Lessee's activities on the Leased Premises with respect to Lessor's insurance.

14. **Lessor's Representations, Warranties and Covenants**. In addition to all other representations, warranties or covenants set forth in this Lease, express or implied, Lessor hereby represents, warrants and covenants to Lessee as follows:

14.1 Lessor's Authority. Lessor is the sole owner of the Leased Premises and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted hereunder. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership or possessory interest in the Leased Premises are signing this Lease as Lessor. When signed, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. No consent or other approval, authorization or action by, or filing with, any person is required to be made or obtained by such party for Lessor's lawful execution, delivery and performance of this Lease.

14.2 Liens and Tenants. To the best of Lessor's actual knowledge, there are no liens, encumbrances, leases, fractional interests, mineral rights or oil and gas rights, or other exceptions to Lessor's fee title ownership of the Leased Premises or otherwise burdening the surface estate of Lessor in the Leased Premises which would prevent or inhibit Lessee's use and occupancy of the Leased Premises as contemplated under this Lease. Lessor has not received any notice (orally or in writing) from any third-party of any adverse claim or encumbrance burdening the Leased Premises. There are no tenants on the Leased Premises or leases encumbering the Leased Premises as of the Effective Date. If applicable, Lessor will cause Lessor's tenant(s) under such leases to vacate the Leased Premises as of the Effective Date to allow for Lessee's exclusive use and quiet enjoyment thereof, without liability to Lessee.

14.3 No Interference. On or after the Effective Date, Lessor shall not grant any rights to any person or entity, which would, currently or in the future, impede or interfere with: (a) Lessee's surface access to the Project and the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of the Project; (b) the flow of solar radiation, or direction of exposure to the sun over the Leased Premises; or (c) the undertaking of any other activities of Lessee permitted under this Lease. Provided, however, the foregoing provision shall not apply to any utility easement that Lessor is required to execute pursuant to applicable law. If a question exists as to whether a potential grant of rights by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the potential grant of rights. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed grant of rights could interfere with the rights of Lessee in the manner(s) prohibited hereunder.

14.4 Title Review and Cooperation. Lessor, at no cost to Lessor, shall cooperate with Lessee to obtain non-disturbance, subordination and other title curative agreements as reasonably requested by Lessee from any person with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Leased Premises to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Lease. Lessor shall also provide Lessee with any further assurances and shall execute any truthfully accurate estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

14.5 Requirements of Governmental Agencies/Lenders. During the Term, Lessor, at no cost to Lessor, shall use commercially reasonable efforts to cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Improvements, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Lessor for its actual, reasonable out of pocket expenses incurred in connection with such cooperation.

14.6 Hazardous Materials. To Lessor's actual knowledge, Lessor is in material compliance with all environmental laws as the same are applicable to the Leased Premises, and is not subject to any environmental proceedings with respect to the Leased Premises, nor is there any environmental proceeding with respect to the Leased Premises to which any other person is subject. Lessor has not received any written notice of any violation, and to the actual knowledge of Lessor, no other person has received any written notice of any violation, that, as of the date hereof, remains uncured, and no writs, injunctions, decrees, orders or judgments outstanding, no suits, claims, actions, proceedings or investigations have been instituted or filed, and none are pending or, to the knowledge of Lessor, threatened, under any environmental laws with respect to the ownership, use or occupation of the Leased Premises. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation; provided, however, that normal agricultural use of agricultural pesticides and other chemicals commonly used on crops in conformance with generally accepted agricultural practices shall not be included as a Hazardous Material for purposes of this Lease. As of the Effective Date, to Lessor's actual knowledge: (a) no Hazardous Materials have ever been produced on the Leased Premises or disposed of thereon or therein, (b) no release has occurred on the Leased Premises, and (c) no Hazardous Materials have migrated to the Leased Premises. Lessor shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Lessor or Lessor's Agents (hereinafter defined), or by Lessor's predecessors-in-interest and known by Lessor as of the Effective Date, of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which were or are introduced, released, or brought onto the Leased Premises by Lessor, Lessor's Agents or Lessor's predecessors-in-interest.

15. **Lessee's Representations, Warranties and Covenants**. In addition to all other representations, warranties or covenants set forth in this Lease, express or implied, Lessee hereby represents, warrants and covenants to Lessor as follows:

15.1 Lessee's Authority. Lessee is a Nebraska limited liability company, is not in violation of any provisions of its Articles of Organization or operating agreement(s), is authorized and financially capable to enter into and perform its obligations under this Lease and, to the best of the knowledge of Lessee, is not in violation of the laws of the State of Nebraska. Each person signing this Lease on behalf of Lessee is authorized to do so. When signed, this Lease constitutes a valid and binding agreement enforceable against Lessee in accordance with its terms. No consent or other approval, authorization or action by, or filing with, any person is required to be made or obtained by such party for Lessee's lawful execution, delivery and performance of this Lease.

15.2 Mechanic's Liens. Lessee shall at all times keep and maintain the Leased Premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for the benefit of Lessee in connection with the Leased Premises. The interest of Lessor in the Leased Premises shall not be subject to liens for improvements made by or on behalf of Lessee, and nothing contained in this Lease shall be construed as a consent on the part of Lessor to subject Lessor's estate in the Leased Premises to any lien or liability under applicable law. Lessee will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work by Lessee on the Leased Premises and will hold Lessor harmless from all losses, costs, or expenses based on or arising out of asserted claims or liens with respect to such work against the leasehold estate or against the interest of Lessor in the Leased Premises or under this Lease. Lessee will give Lessor immediate notice of any lien or encumbrance against the Leased Premises as a result of work by Lessee and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided Lessee may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Lessee causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Lessor within such thirty (30)-day period.

16. **Indemnity**.

16.1 Indemnity by Lessee. Lessee shall defend, indemnify and hold Lessor, and Lessor's elected and appointed officials, employees, agents, contractors, tenants, heirs and successors harmless from and against all Defaults (subject to applicable cure periods) and all actions, claims, demands, losses, expenses, (including attorney fees), liabilities and claims of liability, for damage to property or injury to persons resulting from the Operations or the Project or any actions, inaction or activities of Lessee, its agents, contractors, employees, guests, invitees, licensees and permittees (collectively, "**Lessee's Agents**") on or about the Leased Premises or any adjacent property (including but not limited to any private roadways located on adjacent property), except to the extent that such liability or loss is due to the negligence or willful misconduct of Lessor or its agents, employees, contractors, guests, invitees, licensees and permittees (collectively, "**Lessor's Agents**").

16.2 Indemnity by Lessor. To the extent allowed by law, and subject to the restrictions and protections provided under the Iowa Tort Claims Act, Lessor shall defend, indemnify and hold Lessee, and Lessee's directors, officers, members, shareholders, partners, tenants, heirs and successors harmless from and against all Defaults (subject to applicable cure periods) and all liability and claims of liability, for damage to property or injury to persons resulting from actions or activities of Lessor's Agents on the Leased Premises, except to the extent that such liability or loss is due to the negligence or willful misconduct of Lessee or Lessee's Agents.

16.3 Hazardous Materials. Lessee shall not violate, and shall defend, indemnify and hold Lessor harmless against, any claims, costs, damages, fees or penalties arising from a violation by Lessee or Lessee's Agents of any federal, state or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, on or under the Leased Premises, except for any such violation in existence on or under the Leased Premises as of the Effective Date of this Lease.

16.4 Survival of Provision. The obligations of the Parties under this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Assignment; Right to Mortgage and Assign**.

17.1 Terms. As used in this Lease, the term "**Sublessee**" means any person that receives an interest from Lessee of less than all of the right, title or interest under this Lease and the term **"Sublease**" means the grant or assignment of such rights from Lessee to a Sublessee.

17.2 Encumbrances, Security Interests, and Mortgages.

(a) Lessee or a Sublessee may, without Lessor's consent, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Lease, the leasehold estate and/or easement estate(s) created by this Lease (collectively, the **"Leasehold Estate**"), any Sublease, and the Project (collectively, the **"Solar Assets**") in connection with the financing of all or any portion of the Project, which security interests (including any deeds of trusts) in all or a part of the Solar Assets are collectively referred to in this Lease as **"Mortgages**" and the holders of the Mortgages, their designees and assigns are each referred to in this Lease as a **"Mortgagee**".

Under no circumstances shall any Mortgagee or Sublessee have any greater rights of ownership or use of the Leasehold Estate than the rights granted to Lessee in this Lease, and under no circumstance shall any Mortgagee or Sublessee have any greater rights or lesser responsibilities than Lessee under the terms of this Lease. Notwithstanding anything in this Lease to the contrary any Sublessee shall be bound by the terms of this Lease to the extent of such Sublessee's interest in and to the Leased Premises or Solar Assets. Lessee shall provide Lessor with written notice of any Mortgage(s) within ninety (90) days after such Mortgage(s) becomes legally binding.

(b) Subject to Section 14.4 of this Lease, Lessor may, upon prior written notice from Lessor to Lessee, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Leased Premises so long as such conveyances do not interfere with Lessee's rights and interests under this Lease. Notwithstanding the foregoing, Lessor may sell, devise or otherwise transfer fee title to the Leased Premises without Lessee's consent so long as any subsequent owner is bound by the terms of this Lease and so long as such conveyances do not interfere with Lessee's rights and interests under this Lease.

17.3 Assignments. Without the prior written consent of Lessor, Lessee and each Sublessee shall also have the right to sell, convey, transfer, lease, or assign its interest in this Lease or Sublease, as the case may be, or any portion thereof, and all or any portion of the Solar Assets on either an exclusive or non-exclusive basis, or to apportion, grant sub-easements, co-easements, separate easements, leases, subleases, co-leases, co-tenancy rights, licenses or similar rights, however denominated (collectively, "**Assignments**") to any third party; provided that the assignee assumes all duties and obligations of Lessee under this Lease~~ and provided the assignee's financial condition is substantially similar to or stronger than Lessee's (as determined by Lessor in its reasonable discretion)~~. The terms of such Assignment(s) shall not expand, or alter in any way, the rights and obligations of the Parties under this Lease. Upon the effective date of any Assignment under which all of the interest of Lessee or any Sublessee (or the interest of their respective successors or assigns) in the Solar Assets is assigned, Lessee or Sublessee, as the case may be, shall be released from any liability under this Lease or Sublease, as applicable, accruing on or after the effective date of the Assignment, provided that the assignee assumes in writing the obligations of the assigning party. Notwithstanding the foregoing, in the event of any Assignment under which less than all of the interest of Lessee or any Sublessee (or the interest of their respective successors or assigns) in the Solar Assets is assigned, Lessee or Sublessee, as the case may be, shall not be relieved of its obligations under the Lease or Sublease, as applicable, and Lessee or Sublessee shall continue to be primarily liable to the same extent as though no Assignment has been made, unless otherwise agreed to in writing by Lessor. Lessee shall provide written notice to Lessor of any Assignment(s) within ninety (90) days after such Assignment(s) becomes legally binding; provided, however, that failure to give such notice shall not constitute a default under this Lease, but rather shall only have the effect of: (a) not binding Lessor with respect to such Assignment(s) until such notice is given, and (b) not releasing the assignor from liability under this Lease until such notice is given. Any member of Lessee or a Sublessee shall have the right from time to time without Lessor's consent to transfer any partnership, membership or other ownership interest in Lessee or a Sublessee to one or more persons or entities. Lessor may assign this Lease to any subsequent purchaser of the Leased Premises, and upon such assignment shall be released from all rights and obligations under this Lease arising subsequent to such assignment, and the subsequent purchaser shall assume all rights and obligations under this Lease; provided that any such assignment shall only be effective if it: is documented in a writing that is in a recordable form, a recordable copy of which shall be provided to Lessee within ten (10) days of any such purchase and sale of the Leased Premises, and explicitly provides for the assumption of all obligations and liabilities of Lessor by the assignee thereunder.

17.4 Limitations on Assignment and Sublease. Notwithstanding anything to the contrary in this Lease, Lessee may only enter into said Assignments or Subleases, without Lessor's prior consent, with respect to: (i) transactions made in connection with Lessee's "Financing Documents" (as defined in the PPA); and/or (ii) transactions with an entity that is wholly-owned by Sandhills Energy, LLC, a Nebraska limited liability company (i.e., the parent company of Lessee). All other Assignments shall require the prior written consent of Lessor, which shall not be unreasonably conditioned, delayed or withheld.

18. **Default**. Each of the following events shall constitute an event of default ("**Default**") by the Parties and shall permit the non-defaulting Party to terminate this Agreement and pursue all other appropriate remedies.

(a) The failure or omission by Lessee (or permitted assign) to pay any amount required to be paid hereunder when due, and such failure or omission has continued for thirty (30) days after the date Lessee (or permitted assign) receives written notice from Lessor of such failure or omission to pay;

(b) The failure or omission by any Party to observe, keep, or perform any of the other terms, agreements, or conditions set forth in this Lease (except payment obligations), and such failure or omission has continued for thirty (30) days (or such longer period required to cure such failure or omission, not to exceed ninety (90) days, if such failure or omission cannot reasonably be cured within such thirty (30)-day period) after written notice from the other Party;

(c) A Party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within thirty (30) days after filing; or

(d) The occurrence of an event of default by a Party under the PPA, following the expiration of all applicable cure periods with respect to such event of default thereunder.

In the event of any Default, the non-defaulting Party shall give written notice thereof to the alleged defaulting Party and any Mortgagee that has, in writing to the noticing Party, requested Default notice copies, which notice shall include the acts required to cure the same with reasonable specificity. Delinquent payments shall bear interest from their respective due dates until paid at the rate of eight percent (8%) per annum. Any prohibited conduct under this Lease may be enjoined and this Lease shall be specifically enforceable. Subject to the other terms and conditions of this Lease, each Party shall have all rights and remedies available at law and in equity for any Default by the other Party. The obligations of the Parties under this Section 18 shall survive the expiration or earlier termination of this Lease.

Upon a default, the non-defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease pursuant to applicable law, all of which remedies shall be cumulative.

19. **Termination by Lessee**. Provided Lessee is not in default under any term of this Lease, Lessee, at its option, shall have the right to terminate this Lease at any time during the Term of the Lease, as to all or any part of the Leased Premises, subject to the terms of this Section 19. Termination shall be effective on the date when Lessee has fulfilled its obligations under Section 20 of this Lease. If Lessee's notice is a full termination of all the Leased Premises, the Parties shall be relieved of all further duties and obligations under this Lease and the PPA, other than (i) the payment of any accrued and unpaid obligations or liabilities owed by either Party as of the date of termination; (ii) the removal of the Improvements by Lessee pursuant to Section 20.2; and (iii) any other obligations and liabilities that are expressly stated in this Lease to survive such termination. Upon any such partial termination by Lessee, the Parties shall be relieved of all further duties and obligations under this Lease with respect to the portion thereof terminated by Lessee, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Lease. The Parties agree to execute an amendment to this Lease evidencing such partial termination at the sole cost and expense of the Lessee and the Lessor shall be reimbursed for its reasonable and documented out-of-pocket costs up to Five Thousand Dollars ($5,000.00), including, but not limited to attorneys' fees, incurred as a direct result of obtaining such amendment. Notwithstanding the foregoing, Lessee's right to terminate this Lease under this Section 19 shall be limited to the following: (y) instances in which the PPA has been terminated, and such termination was not due to Lessee's uncured default thereunder; and (z) during the Extended Operations Term(s), as applicable, so long as the PPA is no longer in effect. Under no circumstance shall Lessee have the right to terminate this Lease while the PPA is in effect.

20. **Surrender and Restoration**.

20.1 Surrender. Upon any termination, surrender, or expiration of this Lease, Lessee shall remove all of Lessee's Improvements as stated below and restore the Leased Premises to the condition in which they existed before the Effective Date, and shall peaceably deliver up to Lessor possession of the Leased Premises or any part thereof, and other rights granted by this Lease, and shall execute, at Lessor's request, any and all documents needed to record or evidence such termination with the appropriate governmental agency.

20.2 Restoration. Within six (6) months after any termination, surrender, or expiration of this Lease, Lessee at its sole cost and expense, shall decommission the Solar Energy Facilities, which shall include the removal of all Improvements including, but not limited to all improvements, structures, and sub-stations. Within such six (6) month period, subject to tolling as provided below, Lessee shall also restore the Leased Premises to the condition as it existed on the Effective Date, including the removal or remediation of any Hazardous Materials existing on the Leased Premises as a result of the Project, and shall repair any damage to the Leased Premises as a result of the construction, operation or removal of Lessee's Improvements under this Section 20.2 ("**Restoration**"). On or before the Commercial Operations Date, Sandhills Energy, LLC, as an affiliate with a beneficial interest in Lessee, shall execute and deliver to Lessor a limited guarantee agreement, for the benefit of Lessor, guaranteeing the Restoration Amount (defined below) for the Term of this Lease (the "**Restoration Guarantee**"). The obligations and liabilities of the guarantor under the Restoration Guarantee shall be limited to Lessee's obligations with respect to Restoration, in an amount up to the Restoration Amount, as provided under this Section 20.2, and shall not act as a guarantee of any other obligations or liabilities under this Lease or elsewhere. The "**Restoration Amount**" is defined as an amount equal to the expected cost to complete the Restoration, less the salvage value of all the Improvements, as determined by a qualified third-party engineer. As of the Commercial Operations Date, the Restoration Guarantee shall remain in effect at all times until Lessee fully satisfies its Restoration obligations in accordance with this Section 20.2. The Restoration Guarantee shall explicitly prohibit rescission, modification or termination by Lessee before such time; provided that the guarantor under the Restoration Guarantee may be substituted with a replacement guarantor, in Lessee's sole discretion and without the consent of Lessor, so long as such replacement guarantor maintains at least $10,000,000 in assets. Absent the establishment of a replacement guarantor in accordance with the foregoing, any Assignment(s) or Sublease(s) of this Lease under Section 17, above, shall not release the guarantor in existence at the time of such Assignment or Sublease from its obligations and liabilities under the Restoration Guarantee, and such guarantor shall remain bound thereunder with respect to any such assignee or sublessee. The assets of any such replacement guarantor shall be evidenced by written financial statements prepared by a certified accountant provided to Lessor prior to such substitution becoming effective. All other modifications to the Restoration Guarantee shall require the prior written approval of Lessor. Notwithstanding the foregoing, Lessee's Restoration obligations shall not include the removal of below ground electric lines and cables buried at a depth of more than four (4) feet measured from the topsoil directly above such electric lines and cables, and such Improvements may remain on the Leased Premises without liability to Lessee beyond termination, surrender or expiration of this Lease, and shall become the property of Lessor at such time. Upon the written consent of Lessor, Lessee may leave all roads and grading in their condition existing at the time this Lease terminates. Lessor shall have the opportunity to reasonably inspect the Restoration completed by the Lessee hereunder and, if Lessor does not believe Lessee has satisfied its Restoration obligations, Lessor shall notify Lessee in writing of any incomplete Restoration Obligations within nine (9) months after any termination, surrender, or expiration of this Lease. Upon receipt of such notice, Lessor and Lessee agree to cooperate with each other in good faith to resolve any disputes with regard to completion of Restoration, and if resolved, the deadline for Restoration shall be tolled until completion; provided that such deadline shall not be tolled beyond a maximum of twelve (12) months. If Lessor fails to notify Lessee in writing of any incomplete Restoration Obligations within nine (9) months after any termination, surrender, or expiration of this Lease, it shall be conclusively deemed that Lessee satisfied all obligations with respect to Restoration hereunder, and the Restoration Guarantee shall be of no further force or effect. This Section 20.2 shall survive expiration or termination of this Lease.

21. **Condemnation**.

21.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Leased Premises, or the Improvements thereon, for any public use or otherwise, then the interests and obligations of Lessee under this Lease in or affecting the Leased Premises shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Leased Premises or the Project thereon, (ii) the date that Lessee determines it is no longer able or permitted to operate the Project on the Leased Premises in a commercially viable manner, or (iii) the date of the condemnation judgment; at which time this Lease shall terminate and Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease except the obligations which arose prior to such termination and/or that survive the expiration or earlier termination of this Lease.

21.2 Partial Taking. If, at any time during the Term, any authority having the power of eminent domain shall condemn any portion, less than substantially all, of the Leased Premises, then the interest and obligations of Lessee under this Lease as to those Improvements or the Leased Premises so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Leased Premises, (ii) the date that Lessee determines it is no longer able or permitted to operate portion of the Project so taken on the Leased Premises, in a commercially viable manner, or (iii) the date of the condemnation judgment, and, unless this Lease is terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of the Leased Premises; provided, however, that if Lessee, in its sole discretion, determines that such partial taking would cause the continued operation of the entire Project not to be commercially viable, Lessee shall have the right to terminate this Lease via written notice to Lessor. If Lessee so terminates, Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease except the obligations which arose prior to such termination and/or that survive the expiration or earlier termination of this Lease.

21.3 Condemnation Award. In the event of a complete or partial taking of the Solar Assets, Lessee shall be entitled to receive all compensation and damages paid by the condemning authority arising from such taking and payable on account of Lessees' Improvements, loss of revenue, relocation costs, inability to relocate, and loss of interest in and to the Leased Premises provided under this Lease; Lessor shall be entitled to all other amounts of the award. If allowed under the law, Grantee may separately pursue a claim against the condemnor for such damages.

22. **Certain Protective Covenants**.

22.1 Noninterference. Subject to Section 3.1 of this Lease, during the term of this Lease, Lessor covenants and agrees that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted by this Lease; (ii) take any action or permit any condition to exist on the Leased Premises which will materially interfere with the availability or accessibility of sunlight on or to the Leased Premises; (iii) take any action which will in any way materially interfere with the transmission of electric, electromagnetic or other forms of energy to or from the Leased Premises; or (iv) take any action which will materially impair Lessee's access to the Leased Premises for the purposes specified in this Lease, materially obstruct access to sunlight on, over or across the Leased Premises or materially impair Lessee's access to any or all of the Improvements. Notwithstanding the foregoing, Lessor shall have no obligation under this Lease to provide, obtain or maintain any easement for sunlight on, over or above any real property not owned or controlled by Lessor. If a question exists as to whether an act or potential act by Lessor would or would not interfere with Lessee's rights in the manner prohibited hereunder, Lessor may submit such question to Lessee in writing. Within sixty (60) days after Lessee's receipt of any such written inquiry from Lessor, Lessee shall respond to Lessor in a writing providing either Lessee's consent to or denial of the act. Any denial shall be based upon Lessee's receipt of an opinion from a qualified third-party engineer that the proposed act could interfere with the rights of Lessee in the manner(s) prohibited hereunder.

22.2 Quiet Enjoyment. Provided Lessee observes the terms and conditions of this Lease, Lessor warrants that Lessee shall peaceably hold and enjoy the Leased Premises, and any and all other rights granted by this Lease for its entire term without hindrance or interruption by Lessor or any other person or persons lawfully or equitably claiming by, through or under Lessor except as expressly provided in this Lease.

22.3 Observance of Laws and Covenants; Safety. Lessee shall use the Leased Premises granted by this Lease only for the purposes stated herein and shall conduct all of its operations on the Leased Premises in a lawful manner after obtaining all necessary permits and government approvals.

23. **Consequential Damages Waiver**. The Parties shall have no liability for any special, consequential or exemplary damages or losses of any kind, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including, but not limited to, losses of use, profits, business, reputation, or financing.

24. **Mortgagees.**

24.1 **Mortgagee Protection**. Any Mortgagee, upon delivery to Lessor of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease or a Sublease as the case may be:

(a) **Right to Cure Defaults/Notice of Defaults**. To prevent termination of this Lease or any partial interest in this Lease, each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any Default by Lessee and to prevent the termination of this Lease or any partial interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged Default by Lessee, Lessor shall give written notice of such Default to each Mortgagee that has delivered to Lessor notice of its name and address and who has requested to receive copies of a Default notice concurrently with delivery of such notice to Lessee, specifying in detail the alleged Default and the required remedy. Each such Mortgagee shall have the same amount of time to cure the Default as is given to Lessee. The cure period for each Mortgagee shall begin to run upon receipt of written notice from Lessor to Mortgagee.

(b) **Extended Cure Period**. If any Default by Lessee under this Lease cannot be cured without the Mortgagee obtaining possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of Lessee's interest in this Lease, then any such Default shall be deemed remedied if: (i) Mortgagee or its assignee cures any outstanding monetary Default within the cure periods provided in Section 18; (ii) within the cure period granted to Mortgagee in Section 18 above, either Mortgagee or its assignee shall have acquired possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of such interest in this Lease, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (iii) the Mortgagee or its assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iv) after gaining possession of all or part of the Leased Premises and/or all or part of the Improvements and/or all or part of such interest in this Lease, the Mortgagee or its assignee cures all Defaults under the Lease to the extent required in Section 18, and performs all other obligations as and when the same are due in accordance with the terms of this Lease. If a Mortgagee or its assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting assignee, as the case may be, from commencing or prosecuting the proceedings described above, the period specified above for commencing such proceeding shall be extended for the period of such prohibition.

(c) **Acquisition of Title**. Following acquisition of all or a portion of the Solar Assets by the Mortgagee, its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease or a Sublease, as the case may be, shall continue in full force and effect, and the party acquiring title to the Solar Assets shall cure all monetary Defaults within thirty (30) days of acquiring title, and as promptly as reasonably possible, commence the cure of all other Defaults under this Lease or a Sublease, as the case may be, and thereafter diligently process such cure to completion within ninety (90) days after title is acquired, whereupon Lessor's right to terminate this Lease based upon such Defaults shall be deemed waived, providing all Defaults are cured. Any Mortgagee or other party who acquires Lessee's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease incurred or accruing after such Mortgagee or acquiring party no longer has ownership of the Lease and possession of the Leased Premises.

(d) **Mortgagee's Right to Possession, Right to Acquire and Right to Assign**. A Mortgagee shall have the absolute right (i) to assign its Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Solar Assets by any lawful means; (iii) to take possession of and operate all or any portion of the Solar Assets and to perform all obligations to be performed by Lessee or a Sublessee under this Lease or a Sublease as the case may be, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Solar Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Lessor's consent to assign or transfer all or any portion of the Solar Assets to a third-party so long as such assignee or transferee is financially capable of carrying out Lessee's obligations under this Lease, and Lessor's consent, which shall not be unreasonably withheld, conditioned or delayed, shall be required for any other assignment or transfer. Upon acquisition of the interests of all or any portion of the Solar Assets by a Mortgagee or any other third-party which acquires the interests, from or on behalf of the Mortgagee, in accordance with the terms of this Lease, Lessor shall recognize the Mortgagee or such other party (as the case may be) as Lessee's or a Sublessee's proper successor, and this Lease and any such Sublease shall remain in full force and effect.

(e) **Liability**. Any Mortgagee that does not directly hold an interest in the Solar Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Lease or a Sublease as the case may be prior to the time the Mortgagee directly holds an interest in the Solar Assets, or succeeds to absolute title to Lessee's or a Sublessee's interest therein. A Mortgagee shall be liable to perform Lessee's or a Sublessee's obligations under this Lease or a Sublease as the case may be only for and during the period it directly holds such interest or title. Furthermore, if Mortgagee elects to (i) perform Lessee's or a Sublessee's obligations under this Lease or the Sublease as the case may be, (ii) continue Operations on the Leased Premises, (iii) acquire any portion of Lessee's or a Sublessee's right, title or interest in all or any of the Solar Assets or (iv) enter into a new Lease or a Sublease as the case may be as provided in Section 24(g), then the Mortgagee shall not have any personal liability to Lessor, and Lessor's sole recourse against Mortgagee shall be to execute against the Mortgagee's interest in the Solar Assets. Moreover, any Mortgagee or other party which acquires the Solar Assets by foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations under this Lease or a Sublease, as the case may be, to the extent the obligations are incurred or accrue after that Mortgagee or other party no longer has ownership of the Solar Assets and possession of the Leased Premises.

(f) **Termination**. Neither the bankruptcy nor the insolvency of Lessee or a Sublessee shall be grounds for terminating this Lease or a Sublease so long as all payments and all other monetary charges payable by Lessee or Sublessee under this Lease or a Sublease, as the case may be, are paid by the Mortgagee in accordance with the terms of this Lease or a Sublease, as the case may be.

(g) **New Lease**. If this Lease or a Sublease, as the case may be, terminates for any reason, including, without limitation, because of Lessee's or a Sublessee's uncured Default or because it is rejected or disaffirmed under bankruptcy law or any other law affecting creditors' rights, then, so long as a Mortgagee has cured any monetary and/or insurance Default prior to expiration of the Mortgagee cure period identified in Section 18 and is making commercially reasonable efforts to cure any non-monetary Default, Lessor will, immediately upon written request from the Mortgagee received within ninety (90) days after the termination, rejection, or disaffirmance, without demanding additional consideration therefor, enter into a new Lease or a new Sublease as the case may be in favor of the Mortgagee, which new Lease or new Sublease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease or the Sublease, as the case may be (except for any requirements that have been fulfilled by Lessee or a Sublessee prior to the termination, rejection, or disaffirmance), (ii) be for a term commencing on the date of the termination, rejection, or disaffirmance and continuing for the remaining Term or the term of the Sublease, as the case may be, before giving effect to the termination, rejection, or disaffirmance, (iii) contain a lease or sublease as the case may be on, over, under, upon along and across the Leased Premises or such portion thereof as to which the Mortgagee held a lien on the date of the termination, rejection, or disaffirmance, (iv) contain a grant to the Mortgagee of access, transmission, communications, utility, and other easements covering such portion or portions of the Leased Premises as Lessee held under this Lease prior to its termination, (v) impose the same rights and obligations of the Parties as imposed under this Lease, (vi) not provide Mortgagee with any rights or entitlements in excess of those provided to Lessee, or change or increase the obligations of

Lessor, as provided under this Lease, and (vii) enjoy the same priority as this Lease or a replaced Sublease, as the case may be, has over any lien, encumbrance or other interest created by Lessor, and, until such time as the new Lease or Sublease as the case may be is executed and delivered, the Mortgagee may enter, use and enjoy the Leased Premises and conduct Operations on the Leased Premises as if this Lease or the Sublease, as the case may be, were still in effect at the option of the Mortgagee, the new Lease or Sublease, as the case may be, may be executed by a designee of the Mortgagee, with the Mortgagee assuming the burdens and obligations of Lessee or a Sublessee thereunder. If more than one Mortgagee makes a written request for a new Lease or Sublease, as the case may be, under this Section 24.1(g), then the new Lease or Sublease shall be delivered to the Mortgagee whose lien is senior in priority.

(h) **Mortgagee Consent**. Lessor shall not agree to any material amendment, mutual termination or modification or accept any surrender of this Lease, nor shall any such amendment, termination, modification or surrender be effective, without the written consent of the Mortgagee.

(i) **Amendments**. Lessor and Lessee shall cooperate in amending this Lease from time to time to include any provision that may reasonably be requested by any Mortgagee for the purpose of preserving the Mortgagee's interest in the Leased Premises, provided that neither Lessor's rights nor Lessee's obligations under this Lease are diminished thereby.

24.2 Estoppel Certificates and Cooperation. Each Party will, within thirty (30) business days following receipt of written request from the other Party, execute estoppel certificates (certifying as to truthful matters, including that no default then exists under this Lease or a Sublease, if such be the case), consents to assignment and non-disturbance agreements provided for in this Lease as Lessor, Lessee, a Sublessee or any Mortgagee may reasonably request at any time and from time to time. Lessor, Lessee and Sublessee (if applicable) will cooperate in (a) amending this Lease or a Sublease, as the case may be, from time to time to include any provision that may be reasonably requested by Lessee or a Sublessee or any Mortgagee to implement the provisions contained in this Lease or a Sublease as the case may be, or to preserve a Mortgagee's security interest, and does not materially prejudice Lessor's rights under, or interest in, this Lease, and (b) execute any documents that may reasonably be required by Lessee, a Sublessee, or a Mortgagee to implement the provisions of this Section 24.2. Lessor will request any of Lessor's lenders holding an interest secured by the Leased Premises to execute an agreement of non-disturbance furnished by any Mortgagee with respect to Lessee's or a Sublessee's interest in the Lease. Lessor's cooperation with Lessee under this provision shall be at the sole cost and expense of the Lessee and the Lessor shall be reimbursed for its reasonable and documented out-of-pocket costs up to Three Thousand Dollars ($3,000.00), including, but not limited to attorneys' fees, incurred as a direct result of Lessor's cooperation.

24.3 No Merger. There shall be no merger of this Lease with the fee estate in the Leased Premises by reason of the fact that this Lease or any interest in the Leased Premises may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises, and all persons (including each Mortgagee) having an interest in this Lease or in the estate of Lessor and Lessee, shall join in a written instrument effecting such merger and shall duly record the same.

24.4 Damage/Condemnation. Notwithstanding anything to the contrary in this Lease, the disposition of any condemnation award and/or casualty insurance proceeds shall be governed by the terms of any first priority Mortgage encumbering Lessee's interest in the Solar Assets to the extent the same conflicts with the terms of this Lease.

25. **Notice**.

25.1 Writing. All notices given or permitted to be given hereunder shall be in writing.

25.2 Delivery. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) when delivered by courier service which certifies in writing the date of delivery, or five (5) business days after deposit in the United States mail as certified or registered mail (return receipt requested), in a sealed envelope or container, postage and postal charges prepaid, addressed by name and addressed to the Party or person intended as follows:

Notice to Lessor: Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Notice to Lessee: SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

With copy to: Michael D. Sands
Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, NE 68102
msands@bairdholm.com

25.3 Change of Recipient or Address. Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

26. **Expenses of Enforcement**. To the extent permitted under Iowa law, if any Party hereto brings any action or proceeding to interpret or enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party or parties thereto reimbursement for all reasonable expenses, costs and fees incurred in connection with the action or proceeding, including such expenses, costs and fees incurred due to any appeal.

27. **Further Assurances**. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Lease and to give full force and effect to each and all of the provisions thereof.

28. **Amendments**. This Lease shall not be amended or modified in any way except by an instrument signed by Lessor and Lessee.

29. **Severability**. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby.

30. **Governing Law and Dispute Resolution**.

30.1 This Lease shall be governed by the laws of the State of Iowa. Any action to enforce or interpret any provision of this Lease shall be filed in any state or federal court in Iowa having jurisdiction and which is a proper venue in the matter.

30.2 The Parties agree to first attempt to settle any dispute arising out of or in connection with this Lease by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Lease, each shall have all remedies available at law or in equity and as provided by this Lease. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Lease shall be to the court of competent jurisdiction.**

31. **Article and Paragraph Headings**. The Section headings herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of a provision of this Lease.

32. **Entire Agreement**. This Lease shall constitute the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes all other prior writings, negotiations and understandings.

33. **Effect of Termination**. Any termination of this Lease pursuant to the terms hereof shall not relieve either Party from any liabilities, obligations or indemnities arising prior to the effective date of such termination.

34. **Time of Essence**. Time is of the essence regarding each provision of this Lease.

35. **No Waiver**. No waiver by either Party of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by the other Party.

36. **Counterparts**. This Lease may be executed in counterparts.

37. **Ownership of Improvements**. The Improvements shall not be deemed to be permanent fixtures (even if permanently affixed to the Leased Premises) and shall be and remain the sole property of Lessee. Within the ninety (90) day period after receipt by Mortgagee of a notice that the Lease has been terminated prior to the expiration date (or such longer time as may be reasonably necessary to remove the Improvements from the Leased Premises), Mortgagee, may remove the Improvements from the Leased Premises, provided that Mortgagee complies with all requirements of Lessee set forth in the Lease related to Restoration.

38. **Recording of Memorandum**. Concurrent with the execution of this Lease, the Parties shall execute, acknowledge and record in the land records office for Warren County, Iowa, a memorandum of this Lease in the form attached as Exhibit 2, hereto.

39. **No Partnership**. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

40. **Brokerage Commissions**. Lessor and Lessee each represent that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission or finder's fee in connection with this Lease. Lessor and Lessee shall indemnify, defend and hold the other Party harmless from and against any claim for any brokerage commissions or finder's fees claimed to be due and owing by reason of the indemnifying Party's activities.

41. **Taxes on Lease**. If any governmental authority levies, assesses, and/or imposes on Lessor a transfer tax as a result of this Lease, Lessor shall timely pay such tax and Lessee shall reimburse the same to Lessor.

42. **Forfeiture of Leased Premises**. If at any time the Leased Premises or any part thereof shall then be subject to forfeiture, or if Lessor shall be subject to any liability arising out of the nonpayment of real property or personal property taxes that are the responsibility of Lessor hereunder, Lessee may, in its sole and absolute discretion, following the expiration of ten (10) business days' advance notice to Lessor and Lessor's failure to remedy the outstanding tax liability within such ten (10) business day period, notwithstanding any pending contest or review, elect to either pay such taxes or post such bonds as the taxing authority may require to prevent such forfeiture or liability and may offset the amount of such payments from amounts due Lessor under this Lease. Notwithstanding the foregoing, in the event Lessee pays such taxes or posts such bonds during a pending contest or review and Lessor subsequently prevails over the taxing authority, Lessee shall pay Lessor any amounts previously offset under the foregoing sentence if such amounts have been reimbursed to Lessee by the taxing authority.

43. **Governmental Immunity**. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to waive any defense of Governmental Immunity available to Lessor under Iowa Code chapter 670 as it now exists or may be amended from time-to-time. "Governmental Immunity" as used herein shall include all defenses available to Lessor under Iowa Code chapter 670. Nothing in this Agreement shall be construed to waive any other source of sovereign immunity or similar exemption from or limitation on liability available to Lessor.

44. **City and County Ordinances, Zoning and Permit Requirements**. Lessee shall comply with all ordinances, zoning and permit requirements of the City of Indianola, Iowa, and Warren County, Iowa, as applicable, and nothing in this Agreement shall be deemed a waiver of such ordinances, zoning and permit requirements. Furthermore, as provided in such ordinances, zoning and permit requirements, Lessee shall defend, indemnify, and hold harmless the City of Indianola and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever including attorney fees arising out of the actions or omissions of Lessee or Lessee's contractors or contracted operator concerning the construction or operation of the solar energy facility without limitation, whether said liability is premised on contract or tort. Lessee's submittal for a building permit for a solar energy system shall constitute Lessee's consent and agreement to the above terms.

**(Signatures on Following Page)**

**IN WITNESS WHEREOF**, the Parties have executed this Lease to be effective as of the Effective Date.

**LESSOR**

**~~CITY OF~~ INDIANOLA~~, IOWA~~ MUNICIPAL UTILITIES**

By: ______________________________

Print name:________________________

Title: _____________________________

Date: _____________________________

By: ______________________________

Print name:________________________

Title: _____________________________

Date: _____________________________

**LESSEE**

**SE MUNICIPAL IOWA, LLC**,
a Nebraska limited liability company

By: ______________________________
Eric G. Johnson, President

Date: _____________________________

**<u>EXHIBIT 1-A TO LEASE AND EASEMENT AGREEMENT</u>**
**DESCRIPTION OF THE REAL PROPERTY**

The land referred to herein below is situated in Warren County, Iowa:

[~~Insert legal~~Legal description to be supplemented upon the mutual consent of Lessor and Lessee]

**EXHIBIT 1-B TO LEASE AND EASEMENT AGREEMENT**
**DESCRIPTION OF THE LEASED PREMISES**

[TO BE INSERTED PURSUANT TO SECTION 2.4 OF LEASE]

**<u>EXHIBIT 2 TO LEASE AND EASEMENT AGREEMENT</u>**
**FORM OF MEMORANDUM OF LEASE**

**[Follows this page.]**

**RECORDER'S COVER SHEET**

Name of Document: Memorandum of Lease and Easement Agreement for Solar Energy System

Preparer Information:

Michael D. Sands
Baird Holm LLP
1700 Farnam Street; Suite 1500
Omaha, NE 68102

Taxpayer Information (name and complete address):

~~____________________~~
~~____________________~~
~~____________________~~
Indianola Municipal Utilities
Attention: Chris DesPlanques
210 W 2nd Avenue
Indianola, IA 50125

Return Document to:

SE Municipal Iowa, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
~~michael@sandhillsenergyco.com~~michael@sandhillsenergyco.com

**Lessor(s):** ~~____________________~~Indianola Municipal Utilities

**Lessee:** SE Municipal Iowa, LLC, a Nebraska limited liability company

**Legal Description:** See Exhibit A

**MEMORANDUM OF LEASE AND EASEMENT AGREEMENT**
**FOR SOLAR ENERGY SYSTEM**

This Memorandum of Lease and Easement Agreement for Solar Energy System ("**Memorandum**") is made and dated as of ______________, 20__ ("**Effective Date**") by and ~~City of~~ **Indianola~~, Iowa~~ Municipal Utilities** ("**Lessor**") and **SE Municipal Iowa, LLC**, a Nebraska limited liability company ("**Lessee**"), in light of the following facts and circumstances:

Lessor and Lessee entered in that certain Lease and Easement Agreement for Solar Energy System, of even date herewith (the "**Lease**"), pursuant to which Lessor has leased to Lessee certain real property of Lessor ("**Leased Premises**") located in Warren County, Iowa, as more particularly described on the attached Exhibit A and which said Exhibit A is hereby incorporated herein. Lessor and Lessee have executed and acknowledged this Memorandum for the purpose of complying with Section 564A.7, et al., of the Iowa Code and to provide constructive notice of the Lease. Capitalized terms not otherwise defined in this Memorandum shall have the meanings provided in the Lease.

NOW THEREFORE, Lessor and Lessee hereby agree as follows:

**1. Lease of Leased Premises; Easements**. Lessor has granted and leased the Leased Premises to Lessee on the terms, covenants and conditions stated in the Lease. The Lease is solely and exclusively for the development and operation of a solar energy project, and Lessee shall have the exclusive right to use the Leased Premises for such purposes, together with certain related sun non-obstruction, effects, access, and transmission easements, as more fully granted and described in the Lease. Reference is hereby made to the Lease for a complete description of the respective rights and obligations of the parties regarding the Leased Premises and the covenants, conditions, restrictions and easements affecting the Leased Premises pursuant to the Lease. With respect to the sun non-obstruction easement, Lessor and Lessee acknowledge that, as of the Effective Date, the Project is still in the conceptual stages and the configuration and siting of the Improvements has not been finalized. Accordingly, at this time Lessee is unable to provide, in accordance with Section 564A.7 of the Iowa Code, a legal description of the space which must remain unobstructed expressed in terms of the degrees of the vertical and horizontal angles through which the sun non-obstruction easement extends over the Leased Premises and the points from which these angles are measured. In relation thereto, within a reasonable time following substantial completion of the Project, if applicable and provided the Leased Premises remains a part of the Project, Lessee shall provide Lessor with written notice describing the aforementioned information with respect to the sun non-obstruction easement granted hereunder, and such notice shall be made part of and incorporated by the Lease, in accordance with and satisfaction of Section 564A.7 of the Iowa Code.

**2. Term**.

Development Term. The initial period of this Lease, during which Lessee shall conduct development and construction activities shall commence on the Effective Date and shall continue until the "**Commercial Operations Date**," as defined under the power purchase agreement (the "**PPA**") entered into between Lessor and Lessee, unless sooner terminated in accordance with the Lease ("**Development Term**"). The Commercial Operations Date shall occur no later than the "Guaranteed Commercial Operations Date," as defined in the PPA.

Operations Term. The second period of this Lease, if any, during which Lessee shall conduct Solar Operations, shall commence upon the expiration of the Development Term following the Commercial Operations Date and shall continue for a period which ends at 12:59:59 p.m. on the date which is twenty-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs ("**Operations Term**") unless sooner terminated in accordance with the provisions hereof, with two (2) options to extend held by Lessee for five (5) years each; provided that Lessee shall only have the right to extend the Operations Term, as provided above, if: (i) the Improvements remain operational with respect to photovoltaic energy conversion and generation of electricity from sunlight, at the time of such election(s); and (ii) Lessor has the right and option to extend the term of the PPA for [a] period(s) equal to that of the extended term(s) of the Lease, as provided in the PPA.

3. **Ownership**. Lessor shall have no ownership or other interest in any Improvements (as defined in the Lease) installed on the Leased Premises.

4. **Assignment**. The Lease provides, among other things, that Lessee and any Assignee shall have the right to sell, convey, lease, assign, mortgage, encumber or transfer to one or more assignees or mortgagees the Lease, or any right or interest in the Lease, or any or all right or interest of Lessee in the Leased Premises, or any portion thereof, or in any or all of the Improvements that Lessee or any other party may now or hereafter install on the Leased Premises, to: (i) any entity that is wholly-owned by Sandhills Energy, LLC, a Nebraska limited liability company; or (ii) as part of the "Financing Documents" (as defined in the PPA), without the prior consent of Lessor. All other such conveyance shall require the prior written consent of Lessor.

5. **Successors and Assigns**. This Memorandum and the Lease shall burden the Leased Premises and shall run with the land. The Lease and this Memorandum shall inure to the benefit of and be binding upon Lessor and Lessee and, to the extent provided in any assignment or other transfer under the Lease, any assignee or Mortgagee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

6. **No Conflict**. In the event of any conflict or inconsistency between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. Nothing in this Memorandum shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Lease or otherwise limit or expand the rights and obligations of the parties under the Lease and the Lease shall control over this Memorandum in all events.

7. **Multiple Counterparts.** This Memorandum may be executed by different parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall constitute one and the same instrument.

[Signatures on following page(s)]

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum as of the Effective Date.

**LESSOR**:

**~~CITY OF~~ INDIANOLA~~, IOWA~~**
**MUNICIPAL UTILITIES**

By:_______________________________
Name:__________________________
Its: ______________________________

STATE OF IOWA )
) ss.
COUNTY OF ___________ )

Before me, _______________________________, the undersigned notary public in and for this state, on this ____ day of __________________________, ______, personally appeared ______________________________ as __________________ of ~~the City of _______________, Iowa~~Indianola Municipal Utilities, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said ~~City of _______________, Iowa~~entity and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_______________________________________________
Notary Public

(SEAL)

**LESSEE**:

**SE MUNICIPAL IOWA, LLC**,
a Nebraska limited liability company

By: ______________________________
Eric G. Johnson, President

STATE OF _____________ )
) ss.
COUNTY OF___________ )

Before me, ______________________________, the undersigned notary public in and for this state, on this ____ day of _________________________, ______, personally appeared Eric G. Johnson, as President of SE Municipal Iowa, LLC, a Nebraska limited liability company, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said limited liability company and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

______________________________________________
Notary Public

(SEAL)

**<u>EXHIBIT A TO MEMORANDUM OF LEASE</u>**
**DESCRIPTION OF LEASED PREMISES**

The land referred to herein below is situated in Warren County, Iowa:

[~~Insert legal~~Legal description to be supplemented upon the mutual consent of Lessor and Lessee]

Document comparison by Workshare Compare on Thursday, September 8, 2022 8:09:58 AM

| **Input:** | |
|---|---|
| Document 1 ID | PowerDocs://DOCS/2852805/1 |
| Description | DOCS-#2852805-v1-SE_Municipal_Iowa_-_Indianola,_IA_Lease |
| Document 2 ID | PowerDocs://DOCS/2852805/2 |
| Description | DOCS-#2852805-v2-SE_Municipal_Iowa_-_Indianola,_IA_Lease |
| Rendering set | Standard |

| **Legend:** | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| **Statistics:** | |
|---|---|
| | Count |
| Insertions | 58 |
| Deletions | 44 |
| Moved from | 1 |
| Moved to | 1 |
| Style changes | 0 |
| Format changes | 0 |
| Total changes | 104 |

INDIANOLA MUNICIPAL UTILITIES

IMU

Electric • Communications • Water

# MEMORANDUM

**To:** IMU Board of Trustees of the Electric, Water and Communications Utilities

**From:**

**Date:** September 12, 2022

**Subject:** Enter into closed session in accordance with Iowa Code Section 388.9(1) to discuss marketing and pricing strategies and proprietary information of the telecommunications division whose competitive position will be harmed by public disclosure that is not required of potential or actual competitors and no public purpose is served by such disclosure.

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**Recommendation:** Roll call to enter and exit the closed session is in order.

**Attachments:** None