



Council Business Meeting

September 19, 2023

Agenda Item	City Facility Rooftop Lease Between the City of Ashland and the Ashland Solar Cooperative	
From	Scott Fleury PE	Public Works Director
Contact	Scott.fleury@ashland.or.us	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Before the Council is a request to approve a long-term lease (25-years) with the Ashland Solar Coop (ASC) for a community solar project to be installed on the roof of the City's facilities located at 90 North Mountain Avenue. The general parameters of the lease have been agreed upon by both parties.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

- Emergency Preparedness
- Address Climate Change

CEAP Goals: Buildings + Energy

- BE-1-2 Encouraging on-site and community solar energy production
- BE-1-3. Facilitate and encourage solar energy production.
- BE-1-4. Enhance production of on-site solar energy from City facilities.
- BE-3-1 Installing solar at City facilities

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

PREVIOUS COUNCIL ACTION

The Council previously authorized the City Manager to enter into a legal approved Memorandum of Understanding (MOU) between the City and the Ashland Solar Coop to move forward with the leasing of rooftop space at the City's maintenance yard located at 90 North Mountain Avenue.

[May 17, 2022 Staff Report](#)

[May 17, 2022 Business Meeting Minutes](#)

BACKGROUND AND ADDITIONAL INFORMATION

The City of Ashland Public Works Department was contacted by the Ashland Solar Coop with an interest in potentially leasing City rooftop facilities for the installation and management of a community solar project.





Council Business Meeting

In general, a community solar project allows for individuals, businesses, nonprofits, and other groups to either lease or buy a portion of the solar panels in a solar array and then receive an electric bill credit for electricity generated by their leased or purchased share of the community solar system. Community solar can be a great option for people who are unable to install solar panels on their roofs because they don't own their homes, have insufficient solar resources or roof conditions to support a rooftop PV system due to shading, roof size, or other factors, or for financial/other reasons.

Public Works and ASC reviewed potential City facilities where a community rooftop solar project could be implemented, and it was determined the most logical location would be the "service center" located at 90 North Mountain Avenue. As part of moving the project forward and gaining Council acceptance for a community solar project, staff brought forward a Memorandum of Understanding between the City and ASC that the City Council approved. Since approval of the MOU, ASC has worked with their attorney and the City's attorney to formalize lease language to be utilized for the community solar project at 90 North Mountain Avenue. Per the Ashland Municipal Code long term leases or licenses of City property require Council approval through an authorization to allow the City Manager to sign and execute the terms of the lease or license.

General Lease Overview:

The proposed lease term for the rooftop of the City owned structure at 90 North Mountain Avenue is twenty-five (25) years with an annual lease fee of five hundred and fifty dollars, to adjust by CPI-U annually. The lease allows for access to assess the facility for all necessary actions to evaluate, monitor, construct and operate a photovoltaic electric (PV) system. The lessor must provide written consent for any improvements other than the PV facility.

FISCAL IMPACTS

Direct fiscal impacts include an annual rental payment to the City of Ashland of five hundred and fifty dollars annually for the lease term and adjusted accordingly.

DISCUSSION QUESTIONS

Does the Council have any questions about the lease?

STAFF RECOMMENDATION

Staff recommends Council authorize the City Manager to sign final Legal Department approved lease agreement with ASC.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to authorize the City Manager sign a long-term Legal Department approved lease agreement with the Ashland Solar Coop.
2. I move to take no action on the matter.

REFERENCES & ATTACHMENTS

Attachment #1: Ashland Solar Coop Draft Lease

Attachment #2: Ashland Solar Coop and City of Ashland Memorandum of Understanding

**Ashland Electric Services Building Area Rooftop
Lease Agreement**

This **BUILDING AREA Rooftop Lease Agreement** (also referred to herein as “Lease”) is made and entered into this ____ day of _____ 2023, by and between the **City of Ashland**, a municipal corporation of the State of Oregon, by and through the **Ashland Public Works Department**, (hereinafter collectively referred to as “City”), and **ASC #1, LLC, an Oregon limited liability company** (hereinafter referred to as “Lessee”).

RECITALS

1. City is the owner of real property located in Jackson County, Oregon and more specifically described in **Exhibit A** (the “City Property”). City owns and operates an electric utility services building and related facilities on the City Property as described in **Exhibit A-1** (the “City Improvements”).
2. Lessee is engaged in the business of developing, constructing, owning and operating solar energy conversion facilities for the production of electricity.
3. Lessee wishes to lease a portion of the City Property to install and operate a solar photovoltaic energy conversion facility on the roof of the City Improvements, together with a related solar easement, and City is willing to grant Lessee a leasehold interest in accordance with the terms of this Lease.

AGREEMENT

- 1) **TERM / EFFECTIVENESS:** The term of this Lease shall commence upon approval and execution by both City and Lessee and shall, exclusive to Lessee, be renewable in 25-year increments on December 31 of the relative year of renewal, and to terminate on **December 31, 2073**, unless terminated early as provided for herein. Notice of intent to renew should occur within 60 days prior to the expiration of the then present term. Lessee is permitted to operate within the Lease Area 365 days per year.
- 2) **PAYMENT OF RENT AND REIMBURSABLE EXPENSES:**
 - i) Lessee shall pay City an amount annually as Rent for the period of time between the date of this Lease and the Commencement Date as set forth in **Exhibit D**. The “Commencement Date” shall be the first day of the first full month after the Facility commences commercial production of electricity on the Lease Area. The Commencement Date shall occur prior to December 31, 2024. If the Commencement Date does not occur by that date, except as such period may be extended by Force Majeure or agreement of the Parties, either Lessee or City shall have the option to terminate the Lease, in which case neither Lessee nor City shall have any further obligations under this Lease and Lessee shall have no further obligation to pay Rent to City. All Rent obligations arising under this Lease shall be prorated for any partial year.
 - ii) The twelve (12) month periods beginning with the Commencement Date and each anniversary of the Commencement Date shall each be a Lease Year. At the beginning of each Lease Year, Lessee shall pay to City the annual rental payment in advance for the Lease Year in the amount set forth in **Exhibit D** (together with payments due prior to the Commencement Date, “Rent”).

- iii) Lessee will reimburse City for all actual utility and service costs the City provides to the Facility, including electric power, water, telecommunication and cleaning services as applicable.
 - iv) Lessee shall pay all real and personal property and other taxes and assessments levied against the Facility when due including any equipment or property owned by Lessee within the Access Premises or Transmission Premises. If the City Property or Premises experiences any increase in the amount of real property taxes assessed against it as a result of the installation of the Facility on the Premises, including any reclassification of the City Property or Premises or otherwise, Lessee shall pay to the taxing authority or reimburse City an amount equal to the increase caused by the Facility no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid by City, provided that not less than ten (10) days prior to such due date City provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the City Property or Premises and any related information demonstrating the increase was caused by the Facility and the amount of the increase. Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Lease as long as such contest is pursued in good faith and with due diligence and the Party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.
- 3) **SCOPE OF LEASE:** Lessee is granted a lease to install and operate a solar photovoltaic energy conversion facility (Facility”) on the roof of the City Improvements, together with a related solar easement, within the described area portrayed in **Exhibit A (“Premises”)**.
- a) As part of this Lease, City grants Lessee the use on and through that portion of the City Property described in **Exhibit B** (the “Transmission Premises”) for the purpose of installing, operating and maintaining electric distribution lines and communication lines between the Facility and electrical facilities at the Interconnection Point.
 - b) Lessee shall interconnect the Facility directly with Ashland Electric; the estimated location is described in **Exhibit C**, but the final location will be determined by Ashland Electric (the “Interconnection Point”). At Lessee’s expense, Lessee may install equipment at the Interconnection Point which will facilitate the future addition of energy storage facilities. As between City and Lessee, Lessee shall be responsible for all costs of designing, procuring, installing, maintaining and operating any equipment or facilities necessary to interconnect the Facility at the Interconnection Point, and to permit receipt of electricity from Ashland Electric and the transmission and delivery of the electricity produced by the Facility to Ashland Electric. Lessee shall design, install, operate and maintain all interconnection facilities and equipment, meters and other electrical equipment so as to prevent any material adverse effect on City, the City Improvements or City’s operations and activities on the City Property.
 - c) This Lease is not assignable by Lessee but will run with the land and bind any successor to City as owner of the City Property and City Improvements.
 - d) This Lease shall be deemed in gross and exclusive to Lessee other than the right the City retains to use of the City Property and City Improvements according to the terms set forth herein.
 - e) This Lease does not otherwise waive, modify or grant compliance with federal, state, or local laws applicable to the Lessee or its business.

- f) City retains all rights to use and maintain the Premises and Transmission Premises for the purposes for which it holds the property without unreasonably interfering with the operation of the facility or the rights granted to Lessee.
- g) City shall not plant trees, excavate, install improvements, or otherwise undertake activities within the Transmission Premises which will materially interfere with Lessee's electric or communication facilities.

4) **Solar Easement.**

- a) City hereby grants Lessee an exclusive easement in gross to use all sunlight which naturally arrives at the Premises, including an exclusive easement prohibiting any obstruction to the free arrival of sunlight to the Premises throughout the entire area of the City Property described on **Exhibit B** (the "Easement Premises"), which shall consist horizontally three hundred and sixty degrees (360°) from any point where any photovoltaic generating facility is or may be located at any time from time to time (each such location referred to as a "Solar Site") and for a distance from each Solar Site to the boundaries of the Easement Premises, together vertically through all space located above a plane which is 12 feet above the surface of the Easement Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the plane from each point along the exterior boundary of the Easement Premises through each Solar Site to each point and on and along such line to the opposite exterior boundary of the Easement Premises. Trees, structures and improvements located on the Easement Premises as of the date of this Lease shall be allowed to remain and Licensee may not require their removal. City may not place or plant any trees, structures or improvements on the Easement Premises after the date of this Lease which may, in Lessee's reasonable judgment, impede, diminish or interfere with the receipt of sunlight at any Solar Site, unless City has received approval from Lessee for installation of any such trees, structures or improvements. In the event City places or plants trees, structures or improvements on the Easement Premises which violate the provisions of this Section 4(a), Lessee may notify City and require removal of the applicable tree, structure or improvement, or modification thereof to comply with this Section 4(a), within thirty (30) days. The easement granted by this Section 4(a) is intended to conform with the requirements of Ore. Rev. Stat. Section 105.895(2018).
- b) City further grants to Lessee an easement in gross and license for the Facility to create, cause, increase, accentuate, or otherwise contribute to the occurrence of light, shadows, shadow and light flickering, glare and reflection, on and across the Premises and City Property. City acknowledges that the Facility may impact the view and appearance of the City Improvements from other portions of the City Property, adjacent and nearby property and public roadways and may cause glare and other visual effects. City covenants and agrees that City and any agent, employee, club member, or other person claiming through City, will not object or institute any claim or litigation objecting to the installation or operation of the Facility on such grounds whether based on a theory of nuisance or any other bases.

5) **USE OF PREMISES AND OPERATION LIMITS:**

- a) **General Uses and Limits.** Lessee will operate the Facility independently of the established uses of the Ashland Electric Services Building.
 - i) Throughout the Term Lessee shall, at its sole cost and expense, maintain Lessee's Facility in good condition and repair, ordinary wear and tear excepted. Any portion of the Facility constructed, installed or placed on the Premises or Transmission Premises by Lessee pursuant to this Lease may be replaced, repaired or refurbished by Lessee at any time.

- ii) Lessee shall be responsible for the costs to repair or replace any roof membrane or other roof components damaged or adversely affected by installation or maintenance of the Facility.
- iii) Lessee will cause its contractors, vendors and agents, and/or their invitees to:
 - (1) Avoid damage to, or conflict or interference with, the Ashland Electric Services Building, including operations during permitted access and normal business functions.
 - (2) Be subject to all the requirements applicable to Lessee under this Lease and Lessee shall not be relieved of its obligations under this Lease and shall remain liable for the actions and omissions of its contractors, vendors and agents.
 - (3) Lessee reserves the right to relocate or reconfigure the Facility upon the Premises during the term of this Lease, subject to City's prior approval if relocation or reconfiguration materially and adversely affects the City Improvements or their use by City or continuing compliance of the Facility with all requirements of this Lease.
- b) **Improvements.** This Lease does not authorize or permit physical improvements or alterations to City property or installation of structures or fixtures within the Premises other than the Facility without the express written authorization of the City, which will not be unreasonably withheld.
 - i) City shall provide Lessee with copies of the plans and specifications in its possession for the roof and related structural components of the City Improvements necessary for Lessee to design its Facility. City does not provide any warranty or representation about the accuracy of such information or suitability for Lessee's purposes. Lessee may access the City Improvements and City Property prior to construction of the Facility to conduct non-invasive assessments of the City Property and City Improvements.
 - ii) Lessee will promptly remove and/or correct any structure, fixture, or condition in violation of applicable law upon the reasonable request by City.
 - iii) The Facility and related equipment constructed, installed or placed on the Premises and within the Transmission Premises by Lessee pursuant to this Lease shall be the sole property of Lessee and irrespective of whether any of the Facility is deemed to be a fixture or otherwise part of the City Property or City Improvements, and City acknowledges that the Facility is and shall remain personal property of Lessee irrespective of the manner of its attachment or connection to the City Improvements or City Property and the Parties acknowledge that the Facility is severable from the City Property and City Improvements without damage or other adverse effect to the City Property or City Improvements.
- c) **Compliance with Law.** Lessee must comply with all federal, state and local laws, rules, and regulations applicable to Lessee or the Facility.
 - i) Lessee is responsible to determine and ensure that any modification or improvement of the Facility that affects the City Property or City Improvements shall be procured and completed in compliance with federal, state and local laws including, if applicable, federal Davis-Bacon Act and ORS Chapter 279C.
 - ii) Lessee is responsible for obtaining a business license in accordance with AMC Chapter 6.04, if applicable.
 - iii) Any permit, license or other authorization granted by the City shall not in any way be interpreted as a waiver, modification, grant, or affirmation of any other City, state, county or federal agency permits or authorizations, or permission to violate any City, state, county or federal law or regulation.
- d) **Liens.** Lessee shall keep the Premises and City Property free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or the Facility on the Premises, Access Premises, or Transmission Premises, or in connection with

Lessee's use of the Premises, Access Premises, or Transmission Premises. Lessee may contest any such lien but shall post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Lessee agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within one hundred twenty (120) days of the creation of any such lien or encumbrance.

e) **Ordinances.** City reserves the right to seek penalties for Lessee's violations of law, including enforcement of its own Ashland Municipal Code.

f) **Modifications to City Improvements**

i) During the term, City shall have the right to improve and modify the City Improvements in any manner that does not affect the configuration, location or operation of the Facility or the Interconnection Point without the consent of Lessee.

ii) During the first fifteen (15) Lease Years, if City wishes to improve or modify the City Improvements (excluding normal and necessary roof repair and replacement, which are subject to the provisions of subparagraph (iii)) in a manner that may materially affect the configuration, location or operation of the Facility or the Interconnection Point, City and Lessee agree to negotiate the manner of the modifications or improvements to reduce the adverse effect on the Facility or Lessee and any necessary amendments to this Lease to reflect the changes. If the modification or improvement of City Improvements requires Lessee to move or reconfigure the Facility or to materially interrupt or curtail the operation of the Facility, Lessee's consent to the modification or improvement shall be required unless City agrees to reimburse Lessee for the costs incurred by Lessee to move, reconfigure or reduce operation of the Facility. After the fifteenth Lease Year, if City wishes to improve or modify the City Improvements (other than normal and necessary roof repair or replacement) in a manner that may cause Lessee to move or reconfigure the Facility or materially reduce operation of the Facility, City may undertake such modifications or improvements and the Parties shall negotiate the manner in which the City will do so in order to minimize the adverse effect on the Facility and Lessee and any amendments to this Lease necessary to reflect the changes.

iii) In the event that any portion of the roof of the City Improvements on which the Facility is located requires repair or replacement during the Term and the repair or replacement will require the movement or disconnection of any portion of the Facility, City and Lessee agree to cooperate to minimize the dislocation or disconnection of the affected portion of the Facility and the duration of any such relocation or disconnection and to use commercially reasonable efforts to schedule such work for periods when solar energy production is lowest, provided such accommodation does not unduly delay or increase the cost of such work, or cause continuing damage to the Lessor Improvements. Rent shall be abated for the period, and to the extent of, any such relocation or disconnection. Lessee shall be responsible for removing and reinstalling any portion of the Facility necessary to effect the roof repairs, and City shall be responsible for the costs of removal and installation of the Facility.

iv) City does not currently intend to remove, demolish or replace the City Improvements. In the event the City wishes to remove, demolish or replace the City Improvements during the Term, Lessee shall remove the Facility and City shall reimburse Lessee for the cost of removing the Facility plus one-half the estimated lost revenue which Lessee would have received during the balance of the Term.

6) FIRE AND LIFE SAFETY. Lessee shall comply with any and all fire and life safety guidelines,

recommendations and requirements issued by the City of Ashland Fire Marshal, including, but not limited to:

- a. Maintain all required fire and emergency access areas;
- b. Ensure that permitted equipment does not encroach upon or obstruct public walkways or open space areas while maintaining access for emergency vehicles as approved by the City of Ashland Fire Marshal;
- c. Maintain a clear, unobstructed space around any fire hydrant as required for fire safety;
- d. Have available and maintain such fire extinguishers as determined by the Fire Marshal;
- e. Smoking is not permitted on the Premises under any circumstances, and Lessee must so advise its contractors, vendors and agents; and
- f. No use of any bottled gas, electrical devices, or hazardous materials or hazardous substances without prior approval by the Public Works Director or applicable permitting agency. For purposes of this Lease “Hazardous Substance” or “Hazardous Material” means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any local, state or federal environmental law.

7) INSURANCE: Lessee must, at its sole cost and obligation, procure and maintain insurance as provided in **Exhibit E** and at relevant times requiring change in amounts, shall meet or exceed the Tort Claim limits (ORS 30.260-300) in full force and effect throughout the term of this Lease. Lessee must provide the City with copies of insurance certificates reflecting its coverage and shall name the City of Ashland as an additional insured.

8) INDEMNITY AND HOLD HARMLESS: Lessee will defend, indemnify and hold City, its officers, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death,) or damage (including loss or destruction) to property as a result of negligence or intentional acts or omissions by Lessee. Lessee waives the right of subrogation regarding the insurance policy as described in the Insurance Section in this Lease. Lessee will not be held responsible for damages caused by negligence or intentional acts or omissions of City. The obligation to indemnify is expressly understood to survive termination of this Lease for any reason, and includes reasonable attorneys' fees, including attorneys' fees on appeal, and investigation costs and all other reasonable costs, expenses and liabilities incurred by City or its attorney from the first notice that any claim or demand is to be made or may be made.

9) TERMINATION:

a) Mutual Consent; Lessee. This Agreement may be terminated at any time by the mutual consent of both parties. Lessee may terminate this Lease at any time upon notice to City if lessee determines that installation or continued operation of the Facility is not physically or economically feasible.

b) For Cause. City may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Lessee, or at such later date as may be established by City under any of the following conditions:

- i) If the City Improvements are removed, demolished or replaced as described above;
- ii) If federal or state (but not City) regulations or guidelines are modified, changed, or interpreted in such a way that the City is legally prohibited from performing its obligations under this Lease or Lessee is legally prohibited from operating the Facility on the Premises; or

c) For Default or Breach.

i) Either City or Lessee may terminate this Lease in the event of an uncured breach of the Lease by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within thirty (30) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Lease may be terminated at any time thereafter by a written notice of termination by the party giving notice. If a cure of the breach involves a repair or other modification to the Facility which will require more than thirty days to complete, the breach shall be considered cured provided that Lessee initiates the required repair or modification within thirty days and diligently pursues completion as soon as practicable, as demonstrated to City.

ii) The rights and remedies of the parties provided in this subsection (c) are not exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

d) Obligation/Liability of Parties. Termination or modification of this Lease as provided above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification or which expressly survive termination.

e) At the end of the Term, including any termination of the Lease, Lessee shall remove the Facility within six (6) months from the date the Term expires or the Lease terminates, repair any damage that may be caused by such removal and restore any portion of the Transmission Premises located on the ground to a condition comparable to its condition prior to installation of the Facility. If Lessee fails to remove any portion of the Facility within the required time period, that portion of the Facility shall be considered abandoned by Lessee and City may remove that portion of the Facility from the Premises and Transmission Premises and dispose of it in its sole discretion without notice or liability to Lessee. In the event Lessee fails to remove any of the Facility as required or restore the Transmission Premises, and City removes any portion of the Facility or restores the Transmission Premises at City's expense, Lessee shall reimburse City for all reasonable costs of removing that portion of the Facility or restoring the Transmission Premises as required by the Lease, plus the cost of any repair to the City Improvements or City Property resulting from such removal, within thirty days after receipt of an invoice from City.

10) Disclaimer of Title to Environmental Attributes. City agrees that all Environmental Attributes, as defined in Exhibit F, remain the property of Lessee irrespective of whether City consumes or uses any of the electricity generated by the Facility, and City has no title or right to any such Environmental Attributes related to, arising from or associated with the Facility or any electrical capacity or energy created by the Facility. As between the Parties, any grant, rebate, incentive payment, bill credit, tax credit or any other cash or tax benefit arising from or associated with the installation or ownership of the Facility or the production of energy and capacity by the Facility, shall inure to the exclusive benefit of Lessee, including, but not limited to, any production tax credit or investment tax credit pursuant to 26 U.S.C. Sections 45 and 48 or similar state tax law provisions. City shall, at no cost or expense to City, cooperate with Lessee in any applications for such benefits or credits to the extent City's participation is necessary for eligibility, and if any such program or benefit requires the City to be the recipient, City agrees to assign or reimburse any such amounts received to Lessee.

11) DISPUTE RESOLUTION AND ATTORNEY FEES: The preferred method of resolving disputes between the parties under this Lease shall be first by mediation. Mediation shall be conducted by a mediator chosen by mutual agreement of the parties; if there is no agreement, the mediator shall be appointed by

an elected Municipal Court Judge or Judge pro tem located within Jackson County. Except for costs associated with building a case, for attorney fees, and for expert witnesses, any mutually incurred cost of mediation services shall be shared equally between the two parties.

12) MISCELLANEOUS PROVISIONS.

a. **Notice.** Any notice affecting the rights of the parties under this Lease shall be delivered in writing either in person or to the following parties by first class mail:

City: Public Works Director
20 East Main Street
Ashland, Oregon 97520
(Telephone 541-XXXXXXXXXXXX)

Copy to: City Manager, Joe Lessard
City of Ashland
20 East Main Street
Ashland, Oregon 97520
(Telephone: 541-552-2100; Fax: 541-488-5311)

Lessee: ASC #1, LLC
Attn: Pete Jorgensen
Address: 1033 Clay Street, Ashland OR 97520
Phone Number:

- b. **Governing Law.** This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of Oregon in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises. The parties to this Lease do not intend to confer on any third party any rights under this Lease.
- c. **Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be either, invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect.
- d. **Merger.** THIS LEASE CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO AND SUPERSEDES ANY AND ALL PRIOR EXPRESS AND/OR IMPLIED STATEMENTS, NEGOTIATIONS AND/OR AGREEMENTS BETWEEN THE PARTIES, EITHER ORAL OR WRITTEN, AND MAY NOT BE AMENDED, CHANGED OR MODIFIED IN ANY WAY, EXCEPT BY WRITTEN AGREEMENT SIGNED BY ALL PARTIES HERETO.

DATED this ____ day of September, **2023**.

Lessee:

ASC #1, LLC

City of Ashland, Oregon

Printed Name: _____

Joseph L Lessard

City Manager

Date: _____

Date: _____

Approved as to form:

Douglas M McGeary, Acting City Attorney

Joseph L. Lessard, City Manager

EXHIBIT A

**DESCRIPTION OF CITY PROPERTY, PREMISES,
ACCESS PREMISES, AND TRANSMISSION PREMISES**

1. City Property

A tract in Jackson County, Oregon described as the North 350 feet of the West 300 feet, Tax Map 3910E10, Lot 900, according to recorded plats. The City Improvements include the existing electric utility services building and related facilities.

The address of the City Improvements is 90 North Mountain Avenue, Ashland, OR 97520.

2. Premises

All area on and over the roofs on the existing City Improvements on the City Property described above as depicted in the diagram attached as **Exhibit A-1**.

3. Access Premises

Driveways to and in the City Property from Mountain Avenue and the parking lot to the south of the City Improvements and all paved and unpaved or improved areas of the City Property necessary to access the City Improvements and Premises, including access to the roofs of the City Improvements from the exterior by ladder or crane at locations to be mutually agreed by the Parties, and from the interior through stairwells and doors designated by City. Any damage to City Property as a result of such access shall be restored and repaired at Lessee's expense.

1. Transmission Premises

A. That portion of the City Improvements from the roof over, along and upon the exterior wall or through interior soffits and chases to a point inside the locker room as shown on **Exhibit C-1** in which electrical conduit will be located, and which will include a strip five feet wide with the conduit, as installed, as the centerline; and

B. A strip of land 25 feet wide between the Facility inverters and related equipment located immediately south and east of the City Improvements and the existing Ashland Electric transformer located on the sidewalk on the south side of the building, the centerline of which will be the transmission

line to be installed by Lessee or Ashland Electric, all as shown in **Exhibit C-1**. If the Parties agree to have the Facility interconnect at a new transformer being installed by the City, the centerline shall be revised so that the termination point shall be at the point at which the transmission line between the Facility and the interconnection with the transformer terminates at the transformer.

DRAFT

EXHIBIT A-1

DIAGRAM OF PREMISES

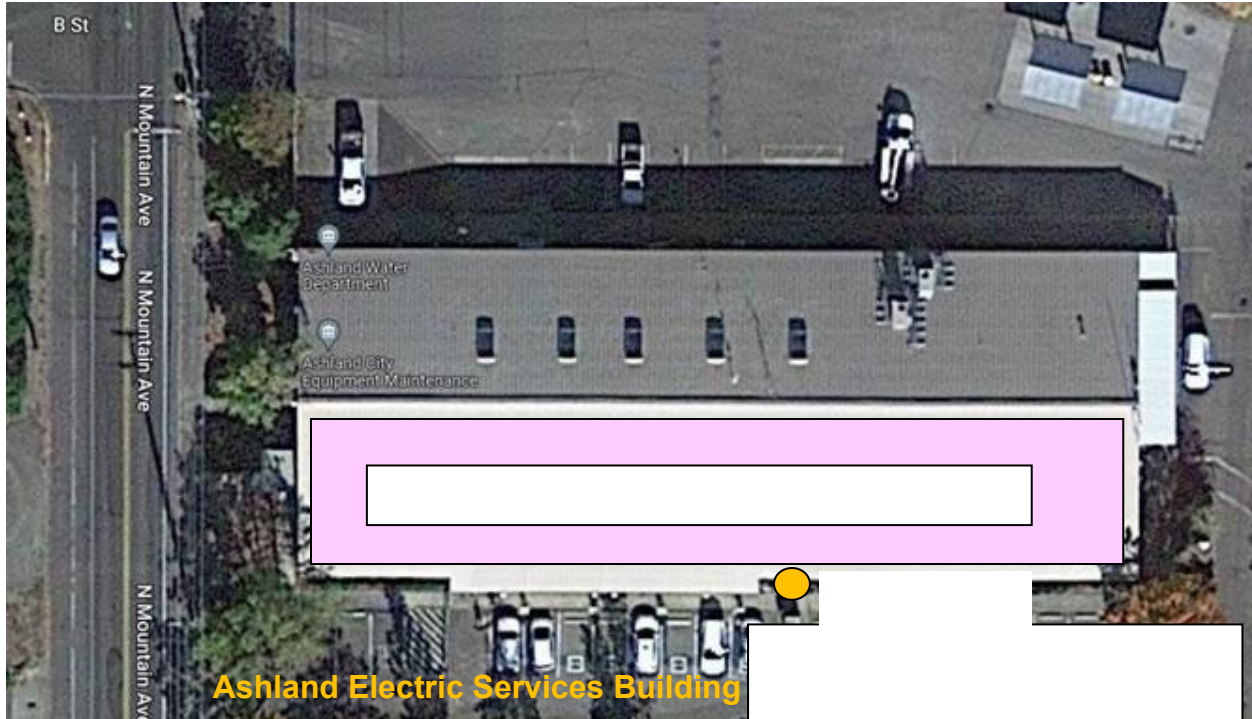


EXHIBIT B

DESCRIPTION OF EASEMENT PREMISES

1. Easement Premises

A tract in Jackson County, Oregon described as follows:

That part of Tax Map 3910E, Lot 900 immediately south of the Premises and 100 feet east of the Premises.

DRAFT

EXHIBIT C

INTERCONNECTION POINT

Interconnection will be at an existing Ashland Electric 208 three phase 300kVa transformer located on the south side of the City Improvements as depicted in **Exhibit C-1**. The Parties may agree to interconnect at a new transformer being installed by the City, in which case this Lease shall be amended to reflect the new location.

DRAFT

EXHIBIT C-1

TRANSMISSION PREMISES AND INTERCONNECTION

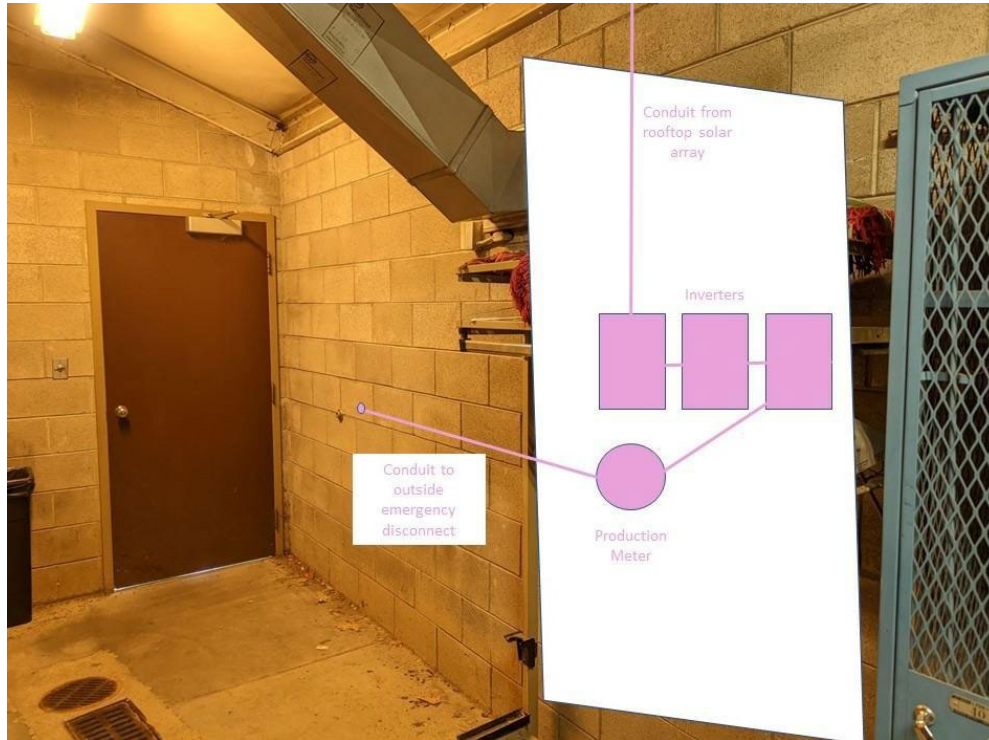


EXHIBIT D

RENT

Initial Rent: Rent shall equal \$50 per year for the period prior to the Commencement Date.

Base Rent: The base rent for the Premises shall be \$550 per year.

CPI-U Adjustment: Commencing on the second anniversary of the Commencement Date, and every two years thereafter, the base rent shall be adjusted by the lesser of (i) changes in the Consumer Price Index for All Urban Consumers (CPI-U) for Portland, Oregon, published by the U.S. Bureau of Labor Statistics for the prior two year period and (ii) four (4) percent. The CPI-U adjustment shall be calculated as follows:

$$\text{New Rent Amount} = \text{Base Rent} \times (\text{CPI-U in Current Year} / \text{CPI-U in Base Year})$$

The "CPI-U in Current Year" shall refer to the most recent CPI-U published before the adjustment date, and the "CPI-U in Base Year" shall refer to the CPI-U as of the Commencement Date.

Adjustment Notice: The City shall provide written notice to the Lessee at least 60 days before the adjustment date, specifying the new rent amount and providing supporting documentation for the CPI-U calculation. Failure to provide notice on time does not relieve the Lessee from paying the amount calculated as provided herein.

Minimum Adjustment: In no event shall the adjusted rent be less than the Base Rent.

Calculation Disputes: If the Lessee disputes the CPI-U calculation or the resulting adjusted rent amount, the City and Lessee shall make good faith efforts to resolve the dispute. If no resolution is reached, either party may seek a professional opinion from an independent third-party economist or statistician. The cost of such opinion shall be borne equally by both parties.

Payment: The adjusted rent shall become effective on the adjustment date specified in the notice provided by the City. The Lessee shall pay the adjusted rent from that date onward.

Additional Terms: All other terms and conditions of the Lease remain in full force and effect.

EXHIBIT E
Insurance Requirements

The Lessee, at its sole cost and expense, commencing on the effective date of this Lease, shall procure and maintain insurance described below in full force and effect throughout the term of this Lease. It is agreed that any insurance maintained by City shall apply in excess of, and not contribute with, insurance provided by Lessee. Lessee's insurance shall be primary and non-contributory and have a cross-liability clause. During the term of this contract, Lessee shall maintain in full force, all the insurance coverage noted below with the City named as additional insured:

1. **Comprehensive General Liability** insurance, with a general aggregate limit of not less than \$2,000,000 and \$2,000,000 per occurrence. Each policy shall contain a blanket contractual liability endorsement to cover the Lessee's indemnification and other obligations under this Lease as well as owners' and contractors' protective insurance, products and completed operations coverage, fire damage, personal and advertising injury coverage. It shall also include, if appropriate for the contract, coverage for Facility operations, explosion and collapse hazard, underground hazard, products, completed operations, contractual insurance, and independent contractors.
2. **Comprehensive Automobile Liability** insurance, with a general aggregate limit of not less than \$1 million and \$1 million per occurrence, including coverage for owned, hired or non-owned vehicles.
3. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Lessee or its insurer(s) to the City.
4. **Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Lessee shall furnish acceptable insurance certificates to City within thirty days after the effective date of this Lease and upon renewal of any applicable policies thereafter. For general liability insurance and automobile liability insurance the certificate will provide that the City, Public Works Division, and its officers, employees and agents are Additional Insureds. The certificate will include the 30-day cancellation clause and will include the deductible or retention level. Insurer companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. Lessee shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. **Certificates of Insurance shall be forwarded to the Public Works Division at the address in the notice provision. .**
5. **City Property Insurance.** The Parties may agree to have the City include the Facility under coverage of City's property insurance if permissible under Applicable Laws, in which case Lessee shall reimburse City for any incremental increase in the City's premiums associated with such coverage for the Facility.

- 6. **Workers Compensation** insurance in compliance with Oregon Statutes, [ORS 656.017] which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of persons with one or more employees, unless exempt under ORS 656.027.) Only if Lessee does not employ workers subject to ORS Chapter 656, Lessee shall sign the following affidavit:

EXEMPTION AFFIDAVIT

Lessee declares, under penalty of perjury and false swearing, that Lessee does not currently employ, and will not employ any individuals for work under this contract during the term this Lease is in force.

_____ Lessee Signature
Date

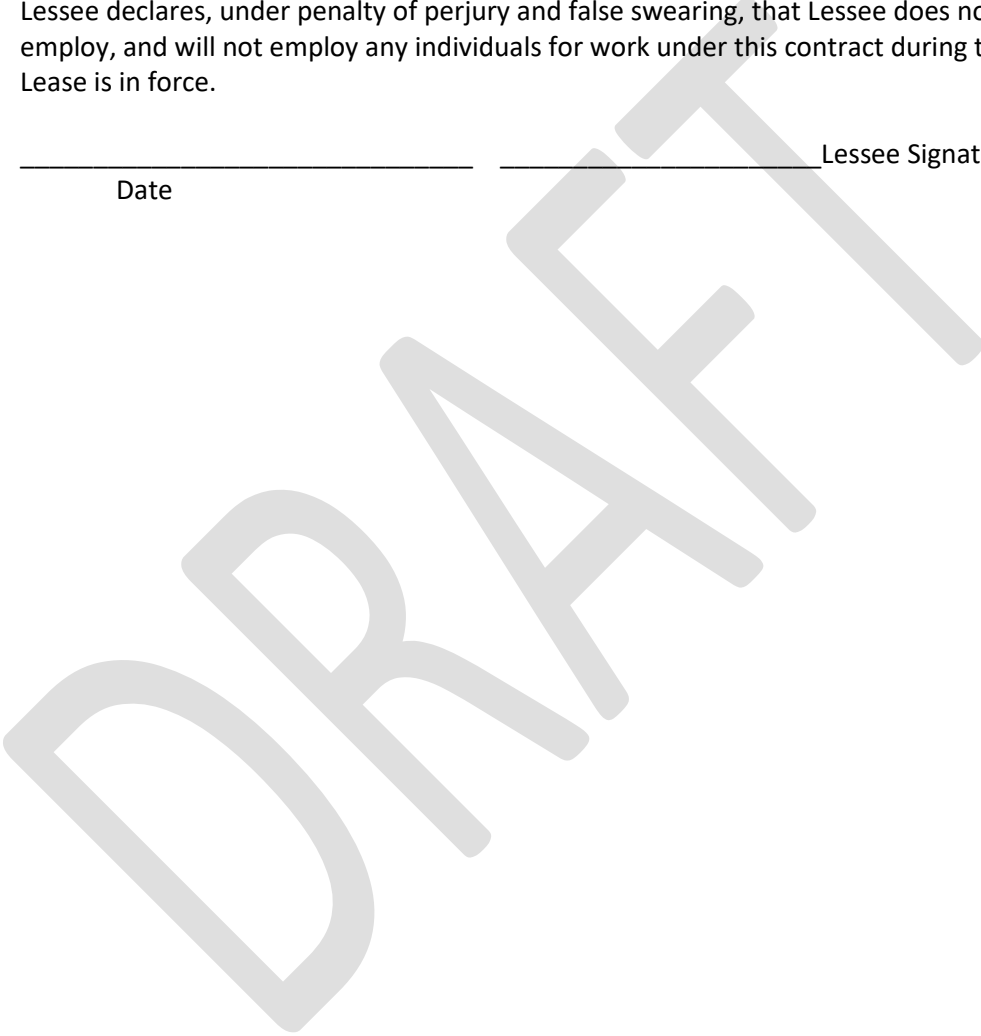


EXHIBIT F

DEFINED TERMS

The terms defined below, when capitalized and used in the Lease, shall have the meanings given to them in this **Exhibit F**.

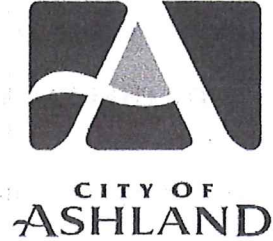
1. **Applicable Laws:** All applicable laws, statutes, treaties, codes, ordinances, regulations, orders, licenses, permits, and rules of any governmental authority, now in effect or enacted in the future, as amended, and as interpreted and applied, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, and awards.
2. **Emergency:** Any condition or situation that in the judgment of City or Lessee (i) endangers or might endanger life or property, or (ii) adversely affects City's ability to maintain a safe environment at the City Improvements, including the Premises.
3. **Environmental Attributes:** All attributes of an environmental or other nature that are created or otherwise arise from the Facility, generation of electricity using sunlight as a source of energy, either in its own right or in contrast to the generation of electricity using nuclear or fossil fuels or resources, including, but not limited to, tags, certificates or similar products or rights associated with solar energy as a "green" or "renewable" energy resource, including any and all environmental air quality credits, emissions reductions, allowances, offsets or other benefits related to the use of solar energy at the City Property in a manner which reduces, displaces or offsets emissions resulting from fuel combustion pursuant to any existing or future international, federal, regional, state or local legislation, regulation or agreement or voluntary agreement, and the aggregate amount of credits, offsets or other benefits related to any environmental or renewable energy credit trading program, information system or tracking system associated with the energy generated from the Facility, and any credits, allowances, offsets, or emission or pollution reductions for substances such as mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter, or other contaminants or air, water or soil under federal, state, regional or local law or any international regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol and similar or successor programs, agreements, laws and regulations. "Environmental Attributes" does not include investment tax credits, or any similar tax credits, or cash grants, production incentives or similar tax or cash benefits, whether or not such tax credits or cash benefits arise from or are related to the Facility's use or generation of solar energy.
4. **Environmental Law:** Any federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements, relating to the production, handling, release, discharge, treatment or disposal of air pollutants, water pollutants, process waste water, Hazardous Substances, toxic substances or otherwise relating to the natural environment or natural resources, each as amended from time to time, including, but not limited to (i) the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.; (ii) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et. seq.; (iv) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; (v) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; (vi) Occupational Safety and Health Act of 1970; (vii) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and (viii) any other similar

applicable federal, state or local law.

5. Hazardous Substance: (A) Any substance which is listed, defined, designated or classified under any Environmental Law as a (i) hazardous material, substance, constituent or waste, (ii) toxic material, substance, constituent or waste, (iii) radioactive material, substance, constituent or waste, (iv) dangerous material, substance, constituent or waste, (v) pollutant, (vi) contaminant, or (vii) special waste; (B) any material, substance, constituent or waste regulated under any Environmental Laws; or (C) petroleum, petroleum products, radioactive materials, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

6. Ashland Electric: Ashland Municipal Electric Utility and its successors and assignees.

7. Prudent Electric Industry Practice: Those methods and that equipment, as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, Ashland Electric, and any Applicable Laws.



MEMORANDUM OF UNDERSTANDING (“MOU”)

PARTIES: Ashland Solar Cooperative (hereinafter “ASC”)
 1033 Clay Street
 Ashland, Oregon 97520

 City of Ashland, Oregon (hereinafter the “City of Ashland”)
 20 East Main Street
 Ashland, Oregon 97520

ASC and the City of Ashland, hereinafter referred to collectively as “Parties,” recognize the following:

- I. The Parties aim to work together to develop community solar projects for the benefit of the customers of the City of Ashland’s electric utility, including low-income households. The Parties recognize the value and need for equitable access to clean energy produced locally, and the Parties will work together to maximize local renewable energy benefits to all customers of the City of Ashland’s electric utility.
- II. The City of Ashland is a municipal corporation in Southern Oregon that provides services to its citizens. The City of Ashland manages its own electric utility. The City of Ashland owns and manages many facilities and lots that have the capacity to host large community solar photovoltaic power generating systems. . . .
- III. ASC is a local solar cooperative whose mission is to increase access to solar power by developing member-owned community solar projects. The Parties agree to increase access to solar power in a socially and economically responsible fashion.

IV. The Parties desire to perform the activities under this MOU solely in furtherance of the purpose stated above. It is the intention of the Parties that all activities conducted will contribute to accomplishing this purpose.

NOW THEREFORE, in an effort to advance collaboration between the Parties as set forth in this MOU, the Parties hereby agree to the following:

1) ASC Responsibilities:

A. ASC will lead the funding and development of community solar projects on City of Ashland properties or other locations as identified and agreed to in writing by the Parties.

B. ASC will lead all aspects of project development including lease negotiations, budgeting, utility interconnection, regulatory certification, design, grant writing, project finance, procurement, construction, and community outreach.

C. ASC may enlist additional external expertise as needed with the prior written consent of the City of Ashland.

2) City of Ashland Responsibilities:

A. The City of Ashland will work with ASC and mutually agreed upon partners and contractors to facilitate effective community solar project siting on City of Ashland properties.

B. The City of Ashland will support ASC and mutually agreed upon partners and contractors to access grant funding and project finance.

C. The City of Ashland will support ASC and mutually agreed upon partners and contractors to conduct community outreach to benefit low-income customers of electric utility.

D. The City of Ashland will negotiate reasonable terms for community solar project site leases in order to maximize the benefits to Ashland Electric customers, including low-income populations in the City of Ashland.

E. The City of Ashland will secure property and general liability insurance coverages for each community solar project developed in partnership with ASC. ASC shall reimburse the City of Ashland for these insurance coverages.

3) Mutual Responsibilities:

A. The Parties will work in partnership to achieve the goals of expanding access and benefits of solar to Ashland Electric customers and to low-income communities.

B. The Parties will ensure engagement of all relevant stakeholders through the development process.

C. The Parties commit to communicating and sharing information as needed to effectively develop the partnership, project and community engagement aspects of this MOU.

D. The Parties will record and share lessons learned from project implementation.

- 4) **Third Party Consultants:** From time to time throughout the term of this MOU, the Parties may find it advisable to consult with third-party advisors, engineers, or other professionals in order to achieve the purposes described in this MOU. In those instances where the Parties agree to consult with a third-party, the Parties will obtain an estimate from the agreed upon third-party and may, upon further agreement in writing, share the cost of such consulting services.
- 5) **Confidentiality:** Except in the furtherance of its responsibilities hereunder, the Parties shall not disclose any Confidential Information without the prior written consent of the respective owner of the Confidential Information and shall disclose Confidential Information only to the Parties' employees or contractor on a "need to know" basis, provided that such employee or contractor agrees to comply with the terms of this section. As used herein, the term "Confidential Information" means any technical, financial, or other business information, marked "proprietary" or "confidential," of the Parties, including but not limited to information about client lists, business process documents, and other information. The Parties' obligations under this section 5, shall not apply, or shall cease to apply to the extent that Confidential Information: (i) is or hereafter becomes generally known or available to the public or interested persons through no breach of this section by the Parties; (ii) is rightfully known to the Parties without restriction on disclosure at the time of its receipt from the respective owner of the Confidential Information; (iii) is rightfully furnished to one or more of the Parties by a third party without breach of an obligation of confidentiality; (iv) is independently developed by one or more of the Parties without use or reference to the Confidential Information; (v) is required to be disclosed by applicable law or pursuant to order of the court, administrative agency, or other governmental body; provided the Party in question provides ten (10) day's prior notice to the respective owner of the Confidential Information for the owner to seek a protective order.
- 6) **Term and Termination:** This MOU will commence on the date it is signed by both Parties (hereinafter the "Effective Date"). If it is signed on separate dates, the latter date shall be the Effective Date. This MOU shall continue in full force and effective until December 30, 2025, unless earlier terminated as set forth herein. Either Party may terminate this MOU for any reason with not less than thirty (30) days' prior written notice to the other. Section 5, Confidentiality, shall survive any termination or expiration of this MOU.
- 7) **Avoidance of Conflict:** This MOU expresses the intent of the Parties to enter into discussions with respect to potentially mutually beneficial collaboration efforts; however, the Parties agree that nothing in this MOU will give rise to any legally binding or

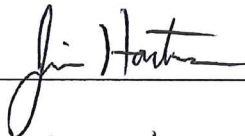
enforceable obligation, liability, or agreement on the part of either Party. Without limitation, nothing in this MOU shall prevent either party from discussing, pursuing, submitting bids, or being awarded business opportunities that may arise as a result of or related to work performed in connection to this MOU.

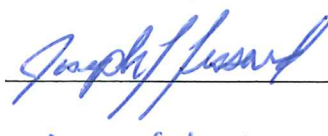
8) Relationship of the Parties. Nothing in this MOU shall be deemed to constitute a partnership or joint venture between the Parties. Nothing in this MOU shall constitute any Party to be the agent of the other Party for any purpose, except as explicitly granted by one Party to the other Party in writing and separate from this MOU.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives, have executed this MOU on the dates set forth below.

ASHLAND SOLAR COOPERATIVE:

CITY OF ASHLAND:

Signature: 

Signature: 

Print Name: Jim Hartman

Print Name: Joseph L Lessard

Title: President

Title: City Manager

Date: 7/4/2022

Date: 7/5/22