

ACCESS AGREEMENT

This ACCESS AGREEMENT (“Agreement”) is made this ____ day of _____ 2019, by and between the Redevelopment Authority of the City of Racine, Wisconsin (the “RDA”) and Hovde Properties, LLC (“Hovde”) (collectively the “Parties”).

RECITALS

WHEREAS, the RDA owns the property located at 233 Lake Avenue, Racine, Wisconsin (the “Property”); and

WHEREAS, the Property is subject to several restrictions and prohibitions set forth in the following documents (collectively, the “Constraint Documents”): a letter from the Wisconsin Department of Natural Resources (“WDNR”) to Frank Dombrowski of We Energies dated November 25, 2014 (the “NFA Letter”); that Restrictive Covenant recorded against the Property in the Records of Racine County, Wisconsin as Document No. 2396229 (the “Restrictive Covenant”); Exhibit B to the Restrictive Covenant containing a Direct Contact Barrier and Materials Management Plan (the “Cap Plan”); that Environmental Remediation and Groundwater Extraction Agreement recorded against the Property in the Records of Racine County, Wisconsin as Document No. 2396240 (the “Remediation Agreement”); that Utility and Building Easement recorded against the Property in the Records of Racine County, Wisconsin as Document No. 2396241 (the “Easement Agreement”); the Cap Disturbance Approval Request for Geotechnical Investigation from TrueNorth Consultants to WDNR dated February 21, 2019 (the “Cap Disturbance Request”) ; and that Cap Disturbance Approval for Geotechnical Borings approval letter from the WDNR to Amy Connolly of the RDA and dated March 14, 2019 (the “Cap Disturbance Approval”); and

WHEREAS, advance notice to and/or approval of We Energies and/or WDNR is required before undertaking any activity at the Property that is restricted or prohibited by any of the Constraint Documents, such as collecting samples of surface and subsurface materials at the Property; and

WHEREAS, Hovde desires access to the Property to evaluate the Property in conjunction with its contemplated acquisition and development of the Property, including collecting samples of surface and subsurface materials at the Property.

NOW, THEREFORE, in consideration of the foregoing Recitals and intending to be legally bound hereby, the Parties agree as follows:

AGREEMENT

1. Grant of Access.

A. In accordance with this Agreement, the RDA hereby grants to Hovde and its agents, representatives, and contractors, access to the Property for the sole and exclusive purpose of performing the geotechnical and site preparation work described in one or more Approved

Workplans (the “Work”). For the purposes of this Agreement, an “Approved Workplan” is a description of the proposed Work together with the contact information for Hovde’s designated job-site foreman, a list of contractors to be present at the Property at any time during performance of the Work, a work schedule, one or more maps or diagrams showing the locations of all proposed Work and the IDW staging and storage areas, all of which have been approved by the RDA in an express writing signed by the RDA. The Approved Workplan shall include and shall not be inconsistent with the Cap Disturbance Request. No workplan will be approved without at least 30-days advance notice to We Energies unless We Energies agrees in a writing to the RDA to a lesser time period. If the scope or nature of the Work changes to be inconsistent with the Cap Disturbance Request, the RDA’s work plan approval shall be void and new written approvals of the WDNR and the RDA shall be required with respect to the Work.

B. Access granted in accordance with this Agreement includes permission, subject to this Agreement and any specific restrictions or limitations set forth in any applicable express written approvals signed by the RDA, for Hovde and its agents, representatives and contractors to access to the Property, to collect samples of soil, monolith and groundwater at and from the Property, to leave in place and periodically sample and service any well or similar instrument or geotechnical device installed or constructed at the Property for so long as such installation is advisable or required to remain, provided that proper removal and abandonment of any such well, instrument or device is Hovde’s responsibility.

C. All access granted by this Agreement is subject to the requirement that Hovde notify by email the RDA and Frank Dombrowski of We Energies or his designee at least 48 hours in advance of the Work and provide the RDA and We Energies the opportunity to be present at the Property during performance of any Work at the Property.

2. Effective Date. This Agreement shall take effect on the day on which the last of the Parties to sign signs the Agreement and provides the signed Agreement to the other Party. Upon becoming effective this Agreement shall supersede all prior access agreements between the Parties with regard to the Property.

3. Underground Utilities. Hovde shall be fully responsible at its own expense for having the Property adequately marked for utilities prior to conducting any of the Work, including contacting “Diggers Hotline,” hiring a suitable utility marking service and hiring such other utility marking services as Hovde concludes are sufficient to undertake the Work.

4. Data and Documents.

A. For the term of this Agreement, Hovde will promptly provide the RDA with copies of all field reports, sample results, and other data arising from any of the Work performed at the Property by Hovde or any of its agents, representatives, and contractors. Prior to submitting to or discussing with any regulatory authority any report, data or correspondence regarding the Property, the Work or any result of the Work, Hovde shall provide the RDA with a draft of any proposed submittal and outline of any proposed discussion and receive the RDA’s written consent to any such proposed submittal and discussion, which shall not be unreasonably withheld. Hovde will offer the RDA reasonable opportunity to participate in any discussion with

any regulatory authority regarding the Property, the Work or data or reports regarding the Property or the Work, including the opportunity to initiate discussions with and submittals to regulatory authorities regarding any aspect of the Property, the Work or any result of the Work.

B. For the term of this Agreement, the RDA will promptly provide Hovde with copies of all field reports, sample results, and other data arising from any of the work performed at the Property by the RDA or any of its agents, representatives, and contractors. Prior to submitting to or discussing with any regulatory authority any report, data or correspondence regarding the Property, the work or any result of the work, the RDA shall provide Hovde with a draft of any proposed submittal and outline of any proposed discussion and receive Hovde's written consent to any such proposed submittal and discussion, which shall not be unreasonably withheld. The RDA will offer Hovde reasonable opportunity to participate in any discussion with any regulatory authority regarding the Property, the work or data or reports regarding the Property or the work, including the opportunity to initiate discussions with and submittals to regulatory authorities regarding any aspect of the Property, the work or any result of the work.

5. Waste Removal and Property Restoration.

A. The term "investigative derived waste" ("IDW") shall mean the materials removed from below the ground surface at the Property as a result of the drilling and other subsurface penetrations performed as part of the Work in accordance with this Agreement and an Approved Workplan and includes, without limitation, groundwater, drilling fluids, soil, rock, fill, historic fill, in-situ stabilized materials, Historic Fill, Residual MGP-impacted Soil and ISS Treated Soil.

B. Hovde shall, in accordance with applicable laws and the Constraint Documents, properly handle and securely store on-site at a location determined by RDA, any IDW that necessarily arises at the Property as a result of the Work.

C. Hovde will be responsible for and pay the cost of Hovde and its agents, representatives and contractors related to any on-site handling, movement, management or storage of IDW. As between the RDA and Hovde, the RDA shall be responsible for, and pay the cost of, any off-site transportation and disposal of IDW necessarily arising at the Property as a result of any of the Work performed at the Property, including preparing and signing any transportation and disposal documents or permits required by applicable federal, state or local laws, ordinances, rules and regulations. Hovde shall provide the RDA with all documentation, with the exception of analytical data needed for landfill waste profiling, that is reasonably required by the RDA to describe the IDW and justify the costs in accordance with paragraph 2.(c) of the Remediation Agreement. The RDA will not be responsible for or pay any cost related to any materials abandoned at the Property or any waste transported to the Property, improperly handled at the Property or unnecessarily produced or discharged at the Property by Hovde or its contractors.

D. Approximately 48 hours before Hovde and its agents, representatives, and contractors demobilize from the Property, Hovde shall by email notify Frank Dombrowski of We

Energies or his designee, We Energies and the RDA of Hovde's intent to conclude the Work and demobilize from the Property. Before Hovde demobilizes from the Property, Hovde shall notify the RDA regarding the nature, quantity and storage location of all IDW necessarily arising at the Property as a result of any of the Work performed at the Property. Before Hovde fully demobilizes from the Property, Hovde shall restore the Property to substantially the same grade, appearance and nature that existed prior to performance of the Work. Hovde shall not fully demobilize from the Property until the RDA's on-site representative inspects the Property, approves the restoration and approves such demobilization. Promptly following demobilization from the Property, Hovde shall notify the RDA and We Energies that the Work at the Property is complete.

6. Insurance. Prior to commencement of the Work, Hovde shall cause its contractors to provide to the RDA certificates of insurance signed by the insurer's representative evidencing that, at a minimum, the coverage required by this Agreement is in full effect for every contractor who will perform any of the Work for the duration of the Work. The certificates for Commercial General Liability coverage, Commercial Automobile Liability coverage and Contractor's Pollution Liability coverage must list the RDA as an additional named insured. All insurance coverage required by this Agreement that is satisfied with a claims made policy shall be maintained in full force for the duration of the Work and 90 days thereafter, except that Contractor's Pollution Liability coverage shall remain in effect for 365 days following completion of the Work. The contractor that will locate the utilities on the Property shall be required to provide the insurance coverages and amounts stated in subsections A, B, C and F below; otherwise, the insurance coverages and amounts stated in subsections A through F below shall apply to every contractor that will perform the Work:

- A. Workers Compensation (statutory amount) and Employer's Liability (\$1,000,000).
- B. Commercial General Liability insurance of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extensions of coverage to include Contractual Liability, Broad Form Property Damage, Products/Completed Operations, Cross Liability. Additionally, the policy shall not exclude X, C or U (Explosion, Collapse, or Underground).
- C. Commercial Automobile Liability insurance with minimum limits of \$1,000,000 per occurrence combined single limit of Bodily Injury and Property Damage coverage. Coverage shall extend to all owned, hired, or non-owned vehicles. In addition, coverage shall not contain any exclusion for pollution.
- D. Environmental Consultants Professional Liability with minimum limits of \$2,000,000 per claim. Policy shall not exclude claims involving pollution.
- E. Contractor's Pollution Liability with minimum limits of \$2,000,000.
- F. Excess Liability Coverage (Umbrella) with combined single limit of \$1,000,000.

7. Compliance with Laws and Constraint Documents. Hovde shall ensure that the Work is conducted in compliance with the Constraint Documents and all applicable federal, state or local laws, ordinances, rules, orders or regulations. Following conclusion of the Work, Hovde shall prepare and deliver to the RDA a brief draft report addressing the documentation requirements in paragraph 8 of the Cap Plan and following RDA approval of same Hovde shall finalize and submit said report to Frank Dombrowski of We Energies or his designee and the WDNR.

8. Safety. During the performance of the Work Hovde shall ensure the safety of persons on and off the property with respect to any hazard resulting from the Work and also from exposure to IDW and residually contaminated materials at the Property. In addition to any other obligation arising under this paragraph, Hovde shall comply with the provisions of paragraph 6 of the Cap Plan.

9. Indemnification. Hovde shall indemnify, defend and hold harmless the RDA and its officers, directors, employees and agents from and against any and all claims, damages, fines, penalties, losses and expenses, including without limitation attorney fees and costs, arising out of or resulting from (i) the negligent acts or omissions or willful misconduct of Hovde, its agents, representatives, contractors and subcontractors while performing the Work; (ii) the failure of Hovde, its agents, representatives, contractors or subcontractors to comply with any and all applicable federal, state or local laws, ordinances, rules, regulations or building and safety codes and the Constraint Documents while performing the Work; and (iii) the injury or damage caused to any person or property as a result of the Work.

10. Termination. All access provided by this Agreement may be terminated for cause or by written agreement of the Parties, but in any case, shall terminate no later than June 1, 2020, unless modified by an express written agreement signed by the Parties. All obligations created by this Agreement other than provision of access shall survive for a period of six (6) years following termination of this Agreement.

11. Notices. Unless otherwise specified, notices related to this Agreement shall be sent by U.S. mail and email to the following:

If to the RDA: Amy Connolly
Director of City Development
730 Washington Avenue
Racine, WI 53403
Amy.Connolly@cityofracine.org

William P. Scott
William P. Scott, Attorney At Law, Inc.
924 East Wells Street, Suite 405
Milwaukee, WI 53202
wscott@wpscottlaw.com

If to Hovde: Victor Villacrez
Senior Project Manager
Hovde Properties, LLC
122 West Washington Avenue, Suite 350
Madison, WI 53703
vvillacrez@hovdeproperties.com

Randy Guenther
COO and CFO
Hovde Properties, LLC
122 West Washington Avenue, Suite 350
Madison, WI 53703
rguenther@hovdeproperties.com

Mick Conrad
General Counsel
Hovde Properties, LLC
122 West Washington Avenue, Suite 350
Madison, WI 53703
mconrad@hovdeproperties.com

If to We Energies: Wisconsin Electric Power Company
231 West Michigan Street
Milwaukee, WI 53202
Attn: Mr. Frank Dombrowski
Frank.Dombrowski@wecenergygroup.com

Wisconsin Electric Power Company
231 West Michigan Street
Milwaukee, WI 53202
Attn: Ms. Tonya M. Peters
Tonya.Peters@wecenergygroup.com

Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2400
Milwaukee, WI 53202-4426
Attn: Mr. Joseph Puchner
Joseph.Puchner@quarles.com

12. Modification. This Agreement constitutes the entire agreement between the Parties regarding these matters. This Agreement may only be changed by an express written agreement signed by all Parties.

13. No Admissions. This Agreement shall not constitute or be used as evidence of any admission of law, fact, or liability, or a waiver of any right or defense by either Party.
14. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, and any action arising under or pursuant to this Agreement shall be venued in Racine County, Wisconsin.
15. Miscellaneous. This Agreement may be executed in counterparts, all of which when taken together shall constitute one and the same instrument. This Agreement may be executed and transmitted by facsimile or other electronic means and any original signature so transmitted shall be as valid as would an original signature on an original document.

[Signatures appear on the following page.]

**THE REDEVELOPMENT AUTHORITY OF
THE CITY OF RACINE**

Dated _____

By _____
Its _____

Attest: _____

Print Name: _____

Title: _____

HOVDE PROPERTIES, LLC

Dated _____

By _____
Its _____