



All Together Better

CONNECT SERVICES AGREEMENT

Agreement No. 10192

CUSTOMER	Full Legal Name: City of Aurora, IL		Legal Contact:	Rick Veenstra	
	Billing Address: City of Aurora, 44 East Downer Place, Aurora, Illinois 60505		Billing Contact:	Jolene Coulter	
			Billing Phone:	630-256-3550	
			Billing Email:	PurchasingDL@aurora-il.org	
	Sales Tax Status:	<input type="checkbox"/> Exempt (Attach Certificate)	TIN or FEIN:		
		<input type="checkbox"/> Non-Exempt			
	Insurance:	<input type="checkbox"/> Self-Insured			
		<input type="checkbox"/> Insurance Certificate Attached			
	Shipping Address: City of Aurora – Parks Department 903 Ray Moses Dr. Aurora, IL 60505		Shipping Contact:	Gio Santana	
			Shipping Phone:	630-688-2179	
Shipping Email:			gsantana@aurora-il.org		

Connect Services Schedule (LX)

	System Software		Automated System Monitoring
	<ul style="list-style-type: none"> CLEAN Management Console Licenses for Full Term CLEAN Mobile Software Licenses for Full Term 		<ul style="list-style-type: none"> Automated System Diagnostics and Alerts
	Equipment/Hardware		Cleaning and Inspection
	<ul style="list-style-type: none"> Custom Configuration as Detailed Below 		<ul style="list-style-type: none"> Annual Comprehensive Station Cleaning Annual 21-Point Station Inspection
	Station Installation		Limited Warranty
	<ul style="list-style-type: none"> On-Site Installation for Stations 		<ul style="list-style-type: none"> Repair and replacement of defective Stations and Parts, throughout the Term of the Connect Services (includes battery)
	Setup and Training		Customer Support
	<ul style="list-style-type: none"> CLEAN Management Console Software Account Setup System Training & Onboarding 		<ul style="list-style-type: none"> Customer Support Hotline and Trained Field Service Professionals
	Equipment/Hardware Configuration		
	<ul style="list-style-type: none"> 21 Smart Max Double Station with Foot Pedals and Message Panels 9 Smart Single Station with Chute, Foot Pedal, and Message Panels 1 Smart Double Station with Chutes, Foot Pedals, and Message Panels 22 Smart Max/Smart Double Station with Hopper, Chute, Foot Pedals, and Message Panels 		
Connect Services Fees: Total Monthly System Cost			\$8,185.01
Ten (10) Boxes of HC Bags (50 Bags per Box): One Time Fee			\$554.40
Eight (8) Boxes of SC Bags (100 Bags per Box): One Time Fee			\$510.40
Shipping: One Time Fee			\$8,280.00

This Connect Services Agreement (the "Agreement"), is made and entered into as of _____ (the "Effective Date"), by and between the City of Aurora, an Illinois home rule municipal corporation, (the "Customer") and Big Belly Solar, LLC a Delaware limited liability company located at 150 A Street, Suite 103, Needham, MA 02494 ("Bigbelly"), and incorporates herein the above Connect Services Schedule, the attached Terms and Conditions, and such other documents and attachments as may be referenced herein. Bigbelly and Customer shall each be referred to herein as a "Party" and collectively as the "Parties." The initial term of the Connect Services to be provided under this Agreement shall be ninety-six (96) months (the "Initial Term"). The payment terms of this Agreement are in accordance with Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et. seq) (the "Payment Terms"). This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one and the same instrument. Intending to be legally bound, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

CITY OF AURORA ("Customer")

By: _____

Printed Name: _____

Title: _____

Date: _____

BIG BELLY SOLAR, LLC ("Bigbelly")

DocuSigned by:
Michael Mulvena
By: _____
8224098DBD9245C...

Printed Name: Michael Mulvena

Title: Treasurer / Corporate Controller

Date: 9/21/2023

ATTACHMENT A
CONNECT SERVICES TERMS AND CONDITIONS

Capitalized and undefined terms used in these Terms and Conditions shall have the meaning set forth herein. Unless otherwise agreed to in writing by the Parties, the Terms and Conditions of this Agreement are intended to and shall govern: (a) Customer's purchase of the Connect Services for the Equipment specified herein for (i) the Initial Term and (ii) any Renewal Term for such Connect Services for such Equipment; and (b) the Customer's purchase of Connect Services for any Additional Equipment, if added in the future by the Customer, for (i) the Initial Term and (ii) any Renewal Term for such Connect Services for such Additional Equipment.

1.0 Definitions

- 1.1 Services. The term "Connect Services" or "Services" means Connect by Bigbelly, including Software, Equipment, Equipment delivery, installation, cleaning and inspection, customer service and equipment maintenance, repair and replacement of defective Equipment throughout the Term of the Connect Services pursuant to Bigbelly's then-standard Limited Warranty for Connect Services Customers located in the United States and Canada, set up and training, and any other features, products or services provided as part of and included under the terms of this Agreement.
- 1.2 Equipment. The term "Equipment" means station hardware and accessories provided by Bigbelly to Customer for use with the Services.
- 1.3 Software. The term "Software" refers to CLEAN cloud-based software for use with mobile or desktop devices intended for use by Customer with the Equipment and the Services.

2.0 Term of Agreement

- 2.1 Term. This Agreement shall commence as of the Effective Date and may be terminated as provided herein. The Initial Term of the Connect Services to be provided pursuant to this Agreement will commence on the date that all Equipment ordered pursuant to this Agreement has been delivered to the Customer and received at Customer's receiving location. Upon expiration of the Initial Term of the Connect Services, the Initial Term will automatically renew for a subsequent twelve (12) month Term, with a maximum of two (2) renewal terms (the "Renewal Term") unless terminated according to Section 6.7 below. As used herein, "Term" shall mean the Initial Term of the Connect Services and any applicable Renewal Term(s). Except to the extent otherwise provided herein, the Term of the Connect Services is non-cancelable.
- 2.2 Non-Renewal. If Customer elects not to renew the Initial Term or a Renewal Term of the Connect Services, Customer must provide written notice to Bigbelly at least three (3) months prior to the expiration of the Initial Term or the then-current Renewal Term.

3.0 Fees Payable by Customer

- 3.1 Fees. Customer agrees to pay, during the Term, the Connect Services Fees and any one-time fees specified in the Connect Services Schedule, and any fees payable for additional customization and/or related services. Connect Services Fees shall become payable on the date by which all the Equipment ordered pursuant to this Agreement has been delivered to the Customer. Bigbelly shall submit invoices to Customer during the Term of this Agreement per the Payment Terms outlined in the above Connect Services Schedule, and Customer shall pay each invoice in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, et. seq.). All payments shall be made by check or, at Customer's option, may be automatically deposited to the account of Bigbelly as authorized by Customer by means of Customer submitting a signed Pre-authorization Payment Form ("PAF") identical to the PAF attached hereto as Attachment B or in such other form as may be acceptable to Bigbelly. Any failure by Bigbelly to provide an invoice in a timely manner shall not affect Customer's obligation to make payments. Approved, but unpaid invoiced amounts shall accrue interest in the manner and to the extent authorized by the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et. seq.).
- 3.2 Increase in Connect Services Fees. Connect Services Fees are guaranteed for the first twenty-four (24) months of Services. Thereafter, Connect Services Fees are subject to year-to-year increases equal to the rate of inflation as reflected by the Consumer Price Index – Urban for all US Cities, unadjusted ("CPI-U"). Bigbelly will provide Customer at least sixty (60) days prior written notice of a price change.

4.0 Obligations of the Parties

- 4.1 Bigbelly's Obligations

- (A) Equipment. Bigbelly will provide the Equipment identified in the Connect Services Schedule on a rental basis to Customer during the Term of the Agreement. The Equipment will be either new and/or refurbished equipment.
- (B) System Software. The CLEAN™ Software includes communication services and access to the CLEAN™ Management Console and CLEAN™ Mobile. Customer's use of the Software is subject to the CLEAN™ Software License Agreement, the terms and conditions of which are incorporated herein by reference.
- (C) Equipment Delivery. Bigbelly will deliver the Equipment at Customer's expense to Customer's receiving dock or to a location mutually agreed upon by the Parties before the shipment. Bigbelly hereby warrants that the Equipment shall be: (i) of good and merchantable condition, (ii) free from defects and malfunctions, (iii) free of liens, security interests or other encumbrances, (iv) in compliance with all applicable laws, rules, regulations, and applicable governmental orders, and (v) fit for the purpose for which the Equipment is intended.
- (D) Station Installation. Bigbelly Equipment will be installed at mutually agreed upon locations, including semi-permanent attachment to the ground. Installation will be in accordance with the delivery and installation schedule agreed to by the Parties.
- (E) Setup and Training. Bigbelly shall, at its expense, provide Customer with Equipment and Software setup and training. The parties shall agree upon the location and method of such training.
- (F) Standard Limited Warranty – Repair and Replacement of Defective Equipment and Parts. Customer shall receive the benefits of Bigbelly's then-standard Limited Warranty for Connect Services Customers located in the United States and Canada throughout the Term of the Connect Services provided under this Agreement (the terms and conditions of which are available upon request and are incorporated herein by reference).
- (G) Customer Support and Equipment Maintenance. Except for losses described in Section 5.2 below, Bigbelly will support the Customer in the maintenance of the Equipment at its sole discretion and expense in order to optimize up time. Technical Customer Support is available Monday through Friday, 7am to 6 pm EST to guide Customer in troubleshooting, repair and replacement efforts and to assist with parts ordering. In addition, Bigbelly maintains a network of trained Field Service professionals available for dispatch upon Customer request to investigate and resolve issues in the field.
- Replacement batteries for the Equipment, when needed in Bigbelly's discretion in order to maintain the normal operation of the Equipment, will be provided during the Term at no additional cost to Customer. If, however, station operating conditions change such that insufficient sunlight is available for normal station operations (for example, Customer moves a station into storage and fails to switch off station, or places a station under awning), resulting in premature failure of a battery or batteries, then the battery or batteries will be replaced at Customer expense.
- (H) Removal. Upon expiration or termination of the Term, Bigbelly will de-install and remove the Equipment at Customer's expense and store the Equipment until pickup by Bigbelly at a mutually agreed upon warehouse location, at Customer. De-installation and removal costs will be capped at \$500.00 per station. Equipment so removed shall be in operational condition and free of any damage for which Customer is responsible pursuant to Section 5.2 below.
- (I) Subcontractor Services (Authorized Bigbelly Service Technician). Upon prior written approval from the Customer, Bigbelly may contract with third parties to provide the Services and shall ensure that any subcontractors it hires will abide by the terms of this agreement and all of Bigbelly's obligations under this agreement shall remain in place.

4.2 Customer's Obligations

- (A) Customer Information & Access. Customer agrees that Bigbelly's ability to perform the Services in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by this Agreement shall be extended in the event that Customer fails to provide such information and/or access in a timely manner.
- (B) Shipping. Customer agrees to pay for shipping expenses and to provide an appropriate facility at which the Equipment can be received, inspected, and staged until the Equipment is installed.
- (C) Site Preparation. Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly's specifications. If Customer's installation surface does not meet such specifications, any additional cost associated with Bigbelly's efforts to properly prepare the surface will be at Customer's

expense. The Customer is responsible for the removal from the locations at which the Equipment will be installed of any existing non-Bigbelly bins or other items.

(D) Operational Safety. Customer agrees to provide immediate notice to Bigbelly with respect to any damage or other event which causes the Equipment to pose a public safety issue or create unsafe operating conditions, and Customer shall take prompt action, if necessary, to eliminate such public or operator safety issues. Customer will promptly service or replace any Equipment that Customer has identified as causing a public safety issue or creating unsafe operating conditions. If after applying its best efforts, Customer cannot resolve the issue, Customer will contact Bigbelly Customer Service and Bigbelly will endeavor to resolve the issue at Bigbelly's expense, unless the unsafe operating condition is due to a Loss as described in Section 5.2.

(E) Automated System Monitoring & Customer Support Escalation - Customer will respond to routine maintenance and repair issues it observes or of which it is notified via automated CLEAN alerts. Customer will use best efforts to promptly resolve issues and may contact Bigbelly Customer Service to receive troubleshooting assistance and instructions for proper repair. If a replacement part or parts is/are needed to resolve the issue, Customer will contact Bigbelly Customer Service to request the part(s). If Customer best efforts do not resolve the issue, Customer should contact Bigbelly Customer Service.

If Bigbelly Field Service is dispatched, and Bigbelly determines that the issue is due to (i) failure by Customer to use best efforts to resolve the issue, (ii) due to Customer error, or (iii) due to damage as described in Section 5.2 below, Bigbelly reserves the right to bill Customer for incurred expenses. Furthermore, if a replacement part is provided and Bigbelly determines that the original part failed due to misuse or abuse, Customer is responsible for replacement cost per Section 5.2 below.

(F) Cleaning & Inspection –One cleaning and inspection visit per every 12-month period shall be made available upon request at no cost to Customer. Unused cleaning visits will lapse and cannot be carried over to a subsequent year. Customer will use best efforts to maintain general cleanliness of Equipment throughout the Term. If, after applying best effort to maintain Equipment cleanliness, Customer finds that the Equipment needs an additional cleaning and inspection visit, Customer may contact Bigbelly Customer Support to request a cleaning and inspection visit. Additional cleaning and inspection visits that are not included in the terms of this Agreement will be at Customer's expense.

(G) Insurance. This Section 4.2(G) shall not be applicable if Customer has provided evidence of self-insurance acceptable to Bigbelly and maintains such self-insurance in full force and effect. During the Term, Customer will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost thereof, with deductible not to exceed \$15,000.00 and without co-insurance. During the Term, Customer will also maintain commercial general liability insurance covering both bodily injury and property damage of at least \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Bigbelly and its assigns will be named as loss payee on the Property insurance and additional insured on General Liability insurance. Customer will pay all premiums for such insurance and must deliver proof of insurance coverage satisfactory to Bigbelly. If Customer does not provide such insurance, it agrees that Bigbelly has the right, but not the obligation, to obtain insurance against theft and physical damage and add an insurance fee to the amount due from Customer.

(H) Equipment Relocation. Within five (5) business days following relocation of any Equipment, Customer shall notify Bigbelly in writing of the specific location of such Equipment.

5.0 Equipment Rental Terms and Conditions

5.1 Title To and Use of Equipment

(A) Title. As further set forth in Section 6.4 below, Bigbelly is and will at all times be the sole owner of the Equipment. Customer shall not acquire any title or interest, legal or equitable, in the Equipment, other than the use rights set forth in this Agreement. In the event this Agreement is deemed to be a disguised sale, Customer hereby grants to Bigbelly a security interest in the Equipment (and all accessions thereto and substitutions therefor) and the proceeds thereof.

(B) Use of Equipment. Customer shall not use the Equipment for other than the intended purposes. Customer shall ensure safe operation of the Equipment by trained personnel. Customer shall comply with all Bigbelly and governmental guidelines, laws, rules, regulations and ordinances applicable to the use and operation of the Equipment.

(C) No Pledge. Customer shall not pledge, lend, create a security interest in or permit any lien to attach to the Equipment or any part thereof or attempt in any other manner to dispose the Equipment.

(D) No Attachments. Customer represents and warrants that the Equipment is, and shall at all times remain, fully removable personal property notwithstanding any affixation or attachment to real property or improvements. Customer shall give Bigbelly immediate notice of any such attachment or other judicial process affecting the Equipment and shall immediately take all action necessary to remove such attachment and terminate the effect of such judicial process on the Equipment.

(E) Equipment Inspection Rights. Bigbelly and its agents shall have the right to enter any premises where Equipment is located to inspect such Equipment at any time with reasonable advance written notice to Customer.

5.2 Risk of Loss. Except as otherwise provided in Bigbelly's then-standard Limited Warranty for Connect Services Customers Located in the United States and Canada, from the time of delivery of Equipment by Bigbelly to Customer until the Equipment is removed by Bigbelly, Customer will bear the entire risk of whole or partial loss, theft, destruction or damage to the Equipment resulting: (a) from any causes other than Bigbelly's or its employees', or its contractors', or its agents' negligent actions or omissions with respect to the Equipment, or (b) from the requisition of the Equipment by any governmental entity, or expropriation or the taking of the Equipment by eminent domain or otherwise (collectively, "Loss"). Customer will give Bigbelly written notice within 10 days of any Loss ("Loss Notice"). If any Equipment is damaged and can be economically repaired, Bigbelly will promptly repair such Equipment to good working order and condition and Customer agrees to immediately pay, on demand, all costs and expenses incurred by Bigbelly in connection therewith. If any Equipment is damaged and cannot be economically repaired, Bigbelly will promptly replace such Equipment and Customer agrees to immediately pay Bigbelly, on demand, the replacement cost of such Equipment and all costs and expenses incurred by Bigbelly in connection with such replacement. Subject to Bigbelly's obligations under this Section 5.2, this Agreement shall remain in full force and effect notwithstanding any Loss.

6.0 General Terms and Conditions

6.1 Taxes and Other Charges. Customer is responsible for all taxes (including sales, use and personal property tax), fees, and assessments (collectively, "Taxes") that may be imposed by any governmental entity or taxing authority in connection with this Agreement or the Equipment or any amount due hereunder. Customer will reimburse Bigbelly (or pay directly to the applicable taxing authority if instructed in writing by Bigbelly) for all such Taxes, except to the extent Customer is tax-exempt and has delivered to Bigbelly a valid and current tax exemption certificate as reasonably determined by Bigbelly.

6.2 Service. Customer agrees that, during the Term, it shall keep in effect the Services. Unless otherwise agreed in a written amendment to this Agreement, Bigbelly or its subcontractors shall be the sole and exclusive suppliers of the Services.

6.3 Additions and Modifications of Equipment. Unless otherwise expressly agreed by an officer of Bigbelly in writing, Customer shall not make any additions, alterations or modifications to the Equipment. Customer shall not remove, cover or damage any Bigbelly logos or other identification markings on the Equipment. Bigbelly shall not be liable for any damage to Equipment caused by and of the following: all external causes such as (without limitation) dropping, accident, vandalism, collision, fire, immersion in water, or otherwise using the Equipment contrary to the instructions and warnings contained in the user materials issued by Bigbelly (the "User Materials"); altering or modifying the Equipment; deterioration of paint, trim, and appearance items that results from use and/or exposure to the elements; cleaning with a high-pressure water system, abrasives, or solvents; exposure to environmental conditions beyond the limits stated in the User Materials; failure to properly maintain or improperly servicing the Equipment; damage caused by use of non-Bigbelly parts or accessories; improper charging of the Bigbelly battery or batteries; or shipping with methods other than those recommended by Bigbelly. See the User Materials for proper use, maintenance, and charging of the Equipment.

6.4 Ownership Rights. The Equipment and Software contain intellectual property including but not limited to patented and unpatented inventions, trade secrets, know-how, and copyrights all of which rights are owned and will continue to be owned exclusively by Bigbelly and/or its licensors and Customer will obtain no rights thereto other than the limited rights of use under this Agreement. Customer acknowledges and agrees that all such intellectual property, including technology, materials, hardware, software, content and data of which the Equipment and Software is comprised, or which is otherwise contained within or attached to, generated, collected or processed by the Equipment and/or Software, is the sole and exclusive property of Bigbelly. Bigbelly hereby grants Customer a royalty-free, non-exclusive, fully paid up right and license to use the Equipment, the Software, and any intellectual property rights therein as necessary for Customer and its contractors to use the Equipment and Services consistent with the terms and conditions of this Agreement. Bigbelly reserves the right, at its sole cost and expense, and subject to applicable governmental guidelines,

laws, rules, regulations and ordinances, at any time upon notice to Customer, to enhance or otherwise modify the Equipment and/or Software made available to Customer under this Agreement, including but not limited to enhancements or modifications for the purpose of implementing Wi-Fi network capability to the Equipment, instituting mechanisms for data collection, processing and analysis. Bigbelly retains all media rights associated with signage, and Customer agrees not to post signage and/or advertisements on the Equipment without written approval by Bigbelly. For avoidance of doubt, this does not prohibit customer from displaying messages solely on behalf of customer such as public service messages.

6.5 Termination

- (A) Effect of Termination. Except in the event of a termination by Customer for default as provided for in Section 6.7 below, any termination of the Agreement by Customer, with or without cause, shall not relieve Customer of its obligations to make any and all payments due under this Agreement.
- (B) Post Termination Duties / Surrender of Equipment. Upon the expiration or earlier termination of the Term of the Connect Services for Equipment hereunder, or the termination of this Agreement, Bigbelly shall remove the Equipment as described in Section 4.1 (H) above.

6.6 Indemnifications by the Parties

- (A) Indemnity by Bigbelly. To the extent permitted by law, Bigbelly shall indemnify, defend, and hold Customer and its directors, officers and employees, harmless, and defend Customer and its representatives if it requests, as to all third party claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Customer or its representatives because of (a) any breach or alleged breach by Bigbelly of any of its warranties to, or agreements with, Customer, (b) any claim that any of the Equipment, Software, or Services infringes any third party patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by Bigbelly's negligent performance of the Services. In no event will Bigbelly be liable for or indemnify Customer against any damage, claim or injury arising out of Customer's or any third party's actions, including but not limited to accidental or intentional tampering with the Equipment. Notwithstanding the foregoing, however, Bigbelly's maximum liability with respect to subsection (b) herein shall be limited to twice (2X) the amount of fees paid by Customer with respect to the infringing Equipment, Software, or Services.
- (B) Indemnity by Customer. To the extent permitted by law, Customer shall indemnify and hold Bigbelly and each of their directors, officers and employees, harmless, and defend Bigbelly and its representatives if it requests, as to all third party claims, liabilities, losses, damages and expenses (including without limitation, reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Bigbelly and/or its representatives because of (a) any breach or alleged breach by Customer of any of its representations, warranties, or agreements with Bigbelly, (b) any claim that any of the information provided by Customer to Bigbelly infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by or resulting from Customer's negligence in operating or securing the Equipment.
- (C) Survival of Indemnity. The rights and obligations of Customer and Bigbelly under this Section 6.6 survive the expiration or termination of this Agreement.

6.7 Default; Dispute Settlement; Governing Law

- (A) Definition of Default. The term "Default" means any of the following events: (i) Customer fails to make any payment required under this Agreement within ten (10) days after the same shall have become due; (ii) Customer or Bigbelly fails to perform any other obligation under this Agreement and such non-performance is not cured within thirty (30) days following notice; (iii) Customer fails to provide insurance as required under this Agreement; (iv) Customer defaults under this Agreement or any other agreement with Bigbelly; (v) Customer or Bigbelly becomes insolvent or makes an assignment for the benefit of its creditors; (vi) a receiver, trustee, conservator or liquidator of Customer or Bigbelly of all or a substantial part of such Party's assets is appointed with or without the application or consent of such Party; (vii) a petition is filed by or against Customer or Bigbelly under any bankruptcy, insolvency or similar law; (viii) any warranty or representation made by either Party herein proves to have been false or misleading when made; or, (ix) there is a material adverse change in Customer's financial condition.
- (B) Default by Customer. Upon the occurrence of a Default by Customer, Bigbelly may do one or more of the following as Bigbelly in its sole discretion shall elect: (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance by Customer of this Agreement or to recover damages for

the breach thereof; (ii) cause Customer, at its expense, to promptly return the Equipment to Bigbelly at such place as Bigbelly designates in writing; (iii) by notice in writing to Customer, cancel or terminate this Agreement, without prejudice to any other remedies hereunder; (iv) enter upon, or instruct its agents or assigns to enter upon, the premises of Customer or other premises where any Equipment may be located and take possession of and remove all or any portion of such Equipment without liability to Customer by reason of such entry or taking possession; (v) require Customer to pay to Bigbelly immediately upon demand eighty percent (80%) of the remaining Services fees to become due during the then-unexpired portion of the Term, the parties agree represents an agreed upon reasonable measure of damages and is not to be deemed a forfeiture or penalty; (vi) collect from Customer all expenses incurred by Bigbelly in connection with the enforcement of any such remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment; and (vii) exercise any other right or remedy available to Bigbelly under applicable law.

(C) Default by Bigbelly. Upon the occurrence of a Bigbelly Default, Customer may do one or more of the following as Customer in its sole discretion shall elect: (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance of the Agreement or recover damages for the breach thereof; (ii) cause Bigbelly, at its expense, to promptly collect the Equipment; (iii) by notice in writing to Bigbelly, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) collect from Bigbelly all expenses incurred by Customer in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys’ fees; and (v) exercise any other right or remedy available to Customer under applicable law.

(D) Dispute Settlement. In the event of any dispute arising due to a Default or with respect to the terms of this Agreement or the obligations of the Parties, the Parties agree to discuss the dispute in an attempt to amicably resolve such dispute within thirty (30) days of the date of a written notice of such dispute by one party to the other. Failing any such resolution, either Party will be free to seek remedy through a court of competent jurisdiction, as outlines in section F below.

(E) Continuation of Obligations. The occurrence of a dispute under or relating to this Agreement shall not relieve Customer of its obligations to make any and all payments described in this Agreement, including the Connect Services Fees.

(F) Governing Law. The Agreement including the Attachments shall be interpreted under the laws of the courts of the State of Illinois, without regard to principles of conflicts of law or the United Nations Convention on the International Sale of Goods. Each party consents to the personal jurisdiction of the United States District Court for the Northern District of Illinois (Eastern Division) or the Circuit Court of the Sixteenth Judicial Circuit, Kane County Illinois.

6.8 Assignment. Customer may not assign this Agreement or any rights hereunder, or sublease or lend any Equipment without the prior written consent of Bigbelly. No assignment or sublease shall relieve Customer of its obligations hereunder and Customer shall remain primarily liable for such obligations. Any sale, assignment, transfer, encumbrance, delegation, or sublease by Customer not consented to by Bigbelly shall be void ab initio. Bigbelly may at any time assign to any person (an “Assignee”) any interest in this Agreement in part or in whole or grant security interests in the Equipment and/or the Bigbelly’s rights hereunder. In such event, all the provisions of this Agreement for the benefit of Bigbelly shall inure to the benefit of and be exercised by or on behalf of such Assignee, but the Assignee shall not be liable for or be required to perform any of Bigbelly’s obligations to Customer and Bigbelly shall retain such obligations. Customer acknowledges that any such assignment shall not materially change Customer’s duties or obligations hereunder. Subject to the foregoing, the Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.

6.9 Relationship of Parties. Bigbelly and Customer are each independent entities and the relationship between Bigbelly and Customer under the Agreement is not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship. Bigbelly has no authority to make any promise, commitment or agreement on Customer’s behalf, and Bigbelly will not represent to anyone that it does have such authority.

6.10 Notices. Each notice provided for in the Agreement shall be given in writing and become effective when:

(A) Served by personal delivery to the recipient’s Legal Department or Contract Administrator;

Customer: City of Aurora BIG BELLY SOLAR, LLC:

Name: Purchasing Department Brian Phillips

Note: Copy sent to Law Department CEO

Address: 44 East Downer Place 150 A Street, #103
Aurora, Illinois 60505 Needham, MA 02494

- (B) Deposited, postage prepaid in the United States registered or certified mails addressed to the recipient’s Legal Department or Contract Administrator;
 - (C) Dispatched to the recipient’s Legal Department or Contract Administrator via overnight mail using UPS, Federal Express or similar carrier; or
 - (D) Sent to recipient’s Legal Department or Contract Administrator: via facsimile or other electronic means if delivery does not require a signature or other confirmation of delivery.
- 6.11 **Force Majeure.** Any delay or failure of either party to perform its obligations (other than payment obligations) shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party’s fault or negligence, such as acts of God; fires, floods, windstorms; explosions; natural disasters; wars and sabotage; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions. Raw material or labor shortages are not force majeure events. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.
- 6.12 **No Warranties.** Customer hereby acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein.
- 6.13 **Use of Trade Names and Trademarks.** Neither Party may use the trade name, service mark, logo or trademark of the other Party for any purpose without previous permission in writing from the other Party.
- 6.14 **Damages and Limitation of Liability.** To the extent permitted by law unless otherwise provided in this Agreement, in no event shall either party, or its affiliates, shareholders, officers, directors, employees, agents, or representatives, or assigns be liable for lost revenue, lost profits, incidental, indirect or consequential damages, resulting from any aspect of the Service provided in connection with this Agreement.
- 6.15 **Injunctive Relief.** If there is a breach or threat of a breach of the terms of this Agreement, the Parties agree that compensation alone would not be an adequate remedy for the harm suffered by the non-breaching Party, which harm would be immediate and irreparable. Therefore, if there is a breach or threatened breach, then the non-breaching Party shall be entitled to seek injunctive relief to stop the breach or threatened breach. The rights and obligations of the Parties under this provision shall survive the termination, cancellation, or expiration of this Agreement.
- 6.16 **Representations.** [This section left intentionally blank]
- 6.17 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, oral and written, negotiations, commitments and writings, and may not be released, discharged, abandoned, changed or modified in any manner, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each Party. Any purchase order or other ordering document issued by Customer is for administrative purposes only and does not form part of this Agreement. If an inconsistency exists between or among the documents listed below, then the following order of precedence shall govern:
- (a) The Connect Services Schedule, above; then
 - (b) The Connect Services Agreement, above; then
 - (c) These Connect Services Terms and Conditions.
- 6.18 **Amendment; Modification; Waiver.** No modification, amendment, waiver or release of any provision of this Agreement or any right, obligation, claim or cause of action arising under this Agreement shall be valid or binding unless in writing and duly executed by the Party against whom enforcement is sought. No waiver by either Party of any breach, or the failure of either Party to enforce any of the terms and conditions of this Agreement, shall affect, limit or waive that Party’s right to enforce and compel compliance with all terms and conditions of this Agreement or to terminate this Agreement as permitted by its terms. Any provision of this Agreement which for any reason may be held unenforceable in any one jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such unenforceability in any one jurisdiction shall not render such provision unenforceable in any other jurisdiction. This Agreement may be

executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together consist of but one and the same instrument.

- 6.19 Confidential Information and Non-Disclosure. As a public body, the City's records are governed by the Illinois Freedom of Information Act (5 ILCS 140/1), which provides that any public records in its possession are subject to inspection by the public. Therefore, unless a statutory exemption applies, records relating to this contract are considered public records under FOIA and therefore not confidential. To the extent Bigbelly may be performing a governmental function on behalf of the City, records in Bigbelly's possession that relate to this contract, unless exempt under FOIA, may also be considered public records subject to inspection by the public. Therefore, Vendor agrees to cooperate with the City in the event a FOIA request for such records is received and agrees to provide the City with the requested records within two (2) business days.

End of Attachment A.

BILLING INFORMATION FORM

PLEASE COMPLETE THIS FORM AND RETURN WITH DOCUMENTS

In order for Big Belly Solar, LLC to properly bill and credit your account, it is necessary that you complete this form and return it with the signed documents.

Billing Name: _____

If you would like your invoices emailed to you in place of regular mail, please provide an email address(es) below:

Billing Address: _____

Attention: _____

Telephone Number: _____

Federal ID#: _____

SPECIAL INSTRUCTIONS

Do you require a Purchase Order Number on the invoice? Yes No

If yes, please provide the PO# _____ and attach a copy of the purchase order (front & back) for our file.

Is a new purchase order required for each new fiscal year period? Yes No

If yes, provide month/year PO expires _____

Do you have multiple contracts, and would you like them all billed on one invoice (Summary Billing)? Yes No

Are you sales tax exempt? **If yes, please attach a copy of exempt certificate or direct pay permit.** Yes No

Do you require any special information to establish a vendor number for _____? Yes No

If yes, please advise: _____

Additional Comments: _____
