

AMENDMENT NO. 1 TO AGENCY LEASE AGREEMENT

THIS AMENDMENT NO. 1 TO AGENCY LEASE AGREEMENT (this "Amendment") dated as of March 8, 2024 (the "Effective Date"), by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency"), and WELLS ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation, having an address at 1 Blue Bunny Drive, Le Mars, IA 51031 (the "Company").

WITNESSETH:

WHEREAS, the Company previously presented an application for financial assistance (the "Original Application") to the Agency, which Original Application requested that the Agency consider undertaking a project (the "Original Project") consisting of, *inter alia*, the following: (A)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the "New Land"), (2) the construction and installation of a power substation and related improvements on the Land (collectively, the "New Improvements" and together with the New Land, the "New Facility"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "New Equipment") necessary for the completion thereof (collectively, the "New Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an electrical substation facility; (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes (collectively, the "Original Financial Assistance"); and (D) the lease (with an obligation to purchase), license or sale of the New Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on September 24, 2019 (the "Original Authorizing Resolution"), the Agency determined to proceed with the Original Project, to grant the Original Financial Assistance and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by the Lease Agreement (as hereinafter defined) and the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, the Agency leased the New Facility from the Company pursuant to the terms and conditions set forth in that certain Company Lease Agreement dated as of March 1, 2021 (the "Company Lease") between the Applicant, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency subleased the New Facility to the Company, all pursuant to the terms and conditions set forth in that certain Agency Lease Agreement (Uniform Project Agreement) dated as of March 1, 2021 (the "Lease Agreement") between the Agency and the Company and in the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of March 1, 2021 (the "PILOT Agreement") between the Company and the Agency, the Company agreed to make certain payments in lieu of real property taxes with respect to the New Facility; and

WHEREAS, pursuant to an application for financial assistance submitted to the Agency by the Company on or about August 18, 2023 (the "Application"), the Company has requested that the Agency consider undertaking a new project with respect to the New Project Facility (collectively, the "Project"), consisting of the following: (A) the extension of the term of the Agency's interest in the New Facility; and (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) in the form of an amended exemption from real property taxes (collectively, the "Additional Financial Assistance"); and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the "Authorizing Resolution"), the Agency determined to proceed with the Project, to grant the Additional Financial Assistance and to amend the Company Lease, the Lease Agreement and the other Transaction Documents in connection with the Project;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 Section 1.1 of the Lease Agreement is hereby amended by deleting the definition of "Financial Assistance" and replacing it with the following:

"Financial Assistance" means, for purposes of this Lease, collectively, (i) an exemption from real property taxes pursuant to the PILOT Agreement, which exemption from real property

taxes the Agency has estimated to have a value of \$1,934,991, and (ii) an exemption from real property taxes pursuant to the PILOT Agreement, as amended by that certain Amendment No. 1 to PILOT Agreement dated as of March 8, 2024 between the Company and the Agency, which exemption from real property taxes the Agency has estimated to have an additional value of \$450,897.

SECTION 2.2 Subsection (M) of Section 2.2 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“(M) The Company shall (i) maintain or cause to be maintained not less than four hundred one (401) full-time equivalent, private sector jobs as described in the Application throughout the term of this Lease, (ii) create or cause to be created at least sixty-four (64) new, full-time equivalent, private sector jobs within one (1) year after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iii) create or cause to be created at least an additional one hundred five (105) new, full-time equivalent, private sector job within two (2) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iv) create or cause to be created at least an additional eighty (80) new, full-time equivalent, private sector job within three (3) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, and (v) create or cause to be created at least one hundred fifty (150) new, full-time equivalent, private sector construction jobs during the period from the Closing Date until the Completion Date; all of which jobs shall, at all applicable times during the term of this Lease, be located at the Project Facility (collectively, the “Minimum Employment Requirement”).”

SECTION 2.3 The first sentence of Subsection (A) of Section 4.2 of the Lease Agreement is hereby deleted and replaced with the following:

“The Company will proceed with due diligence to commence renovation, installation and equipping of the Project Facility in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the renovation, installation and equipping of the Project Facility on or before December 31, 2026 (the “Scheduled Completion Date”).”

SECTION 2.4 Subsection (B) of Section 5.2 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“(B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2034, or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.”

SECTION 2.5 Subsection (D) of Section 6.5 of the Lease Agreement is hereby deleted in its entirety.

SECTION 2.6 Clause (15) of Subsection (A) of Section 10.1 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“(15) An Event of Default shall occur under the Company Lease, under the Fieldbrook Project Agreement, under any other Permitted Encumbrance or under any other contract or agreement between the Agency and the Company.”

SECTION 2.7 Subsection (A) of Section 11.4 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“(A) It is understood and agreed by the parties to this Lease that the Agency is entering into this Lease in order to provide the Financial Assistance to the Company for the Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Agency at its option may pursue a recapture of public benefits conferred by the Agency (as defined in this Section 11.4) or waive such a recapture of public benefits in its sole and complete discretion. Should the Agency elect to pursue a recapture of public benefits conferred by the Agency following a Recapture Event, the amount of such benefits to be recaptured shall be as follows (such amount, the “Recapture of Benefits”):

(i) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the twelfth (12th) anniversary of the Closing Date;

(ii) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the twelfth (12th) anniversary of the Closing Date but on or before the fourteenth (14th) anniversary of the Closing Date;

(iii) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the fourteenth (14th) anniversary of the Closing Date but on or before the sixteenth (16th) anniversary of the Closing Date;

(iv) forty per cent (40%) of the Benefits if the Recapture Event occurs after the sixteenth (16th) anniversary of the Closing Date but on or before the eighteenth (18th) anniversary of the Closing Date;

(v) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the eighteenth (18th) anniversary of the Closing Date but on or before the twentieth (20th) anniversary of the Closing Date; or

(vi) zero per cent (0%) of the Benefits thereafter.

SECTION 2.8 Subsection (A) of Section 12.1 of the Lease Agreement is hereby amended by deleting the notice addresses for the Company and replacing them with the following:

“To the Company: Wells Enterprises, Inc.
1 Blue Bunny Drive
Le Mars, IA 51031
Attention: Dick Kennedy

With a copy to: Wright Calimeri, PLLC
525 Fairmount Avenue
Jamestown, NY 14701
Attention: Edward P. Wright, Esq.

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment;

(C) all other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency; and

(D) the Company shall pay the fees and expenses (including reasonable attorneys' fees and expenses) imposed or incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated hereby.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified by this Amendment or by any document, instrument or agreement executed in connection with this Amendment, are ratified, confirmed and reaffirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) The Company represents and warrants to the Agency that no Event of Default specified in any of the Transaction Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

(D) Neither the Company nor any Affiliate of the Company has employed or retained any appointed or elected government official to solicit or secure the Agency's agreement to enter into this Amendment upon an agreement or understanding for a commission or percentage, brokerage or contingent fee.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other document, instrument or agreement furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Lease Agreement. The Lease Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Lease Agreement, are hereby amended so that any reference to the Lease Agreement in the Lease Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the Lease Agreement shall mean a reference to the Lease Agreement, as amended by this Amendment.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the

State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Company and the Agency.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Lease Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10 No Waiver. Except as expressly provided herein, this Amendment shall not be construed to be a waiver or modification, express or implied, of any of the terms or provisions of the Lease Agreement, any other Transaction Document or any other agreement, document or instrument executed and/or delivered in connection with any of the foregoing, or of any of the Agency's rights thereunder, all of which are and shall remain in full force and effect. This Amendment shall not be construed to constitute a consent to other or further action by the Company or to entitle the Company to any other consent.

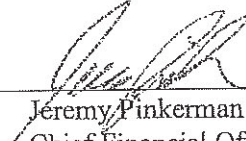
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SECTION 4.11 Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Company:

WELLS ENTERPRISES, INC.

By: 

Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

Agency:

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Richard E. Dixon
Chief Financial Officer

[Signature Page to Amendment No. 1 to Agency Lease Agreement]

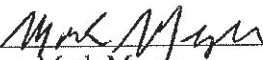
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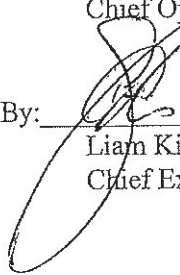
IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

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WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By:  _____
Mark Meyer
Chief Operating Officer

By:  _____
Liam Killeen
Chief Executive Officer

Agency:

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Richard E. Dixon
Chief Financial Officer

[Signature Page to Amendment No. 1 to Agency Lease Agreement]

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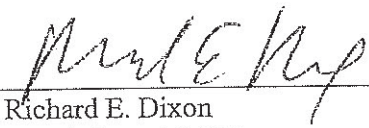
By: _____
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Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

Agency:

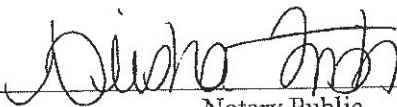
**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Richard E. Dixon
Chief Financial Officer

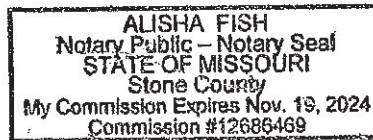
[Signature Page to Amendment No. 1 to Agency Lease Agreement]

STATE OF Missouri)
COUNTY OF Stone)SS.:

On the 23rd day of February, 2024, before me, the undersigned, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



STATE OF)
COUNTY OF)SS.:

On the ___ day of February, 2024, before me, the undersigned, personally appeared Mark Meyer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to Amendment No. 1 to Agency Lease Agreement]

STATE OF)
)SS.:
COUNTY OF)

On the ___ day of February, 2024, before me, the undersigned, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

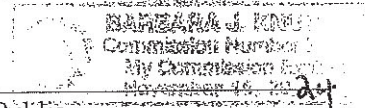
Notary Public

STATE OF Florida)
)SS.:
COUNTY OF Plymouth)

On the 20 day of February, 2024, before me, the undersigned, personally appeared Mark Meyer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Barbara J. Knott

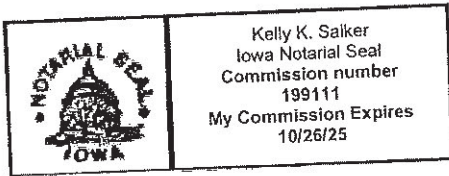
Notary Public



[Acknowledgment Page to Amendment No. 1 to Agency Lease Agreement]

STATE OF Iowa)
COUNTY OF Polk)SS.:

On the 27th day of February, 2024, before me, the undersigned, personally appeared Liam Killeen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Kelly K. Salker
Notary Public

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA)SS.:

On the ___ day of February, 2024, before me, the undersigned, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF)
)SS.:
COUNTY OF)

On the ___ day of February, 2024, before me, the undersigned, personally appeared Liam Killeen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF CHAUTAUQUA)

On the 15 day of February, 2024, before me, the undersigned, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

GREGORY LYLE PETERSON, #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

[Acknowledgment Page to Amendment No. 1 to Agency Lease Agreement]