

Date: March 16 2009



City of Portland, Oregon

RFP No. 109000

**REQUEST FOR PROPOSALS
for
SOLAR ELECTRIC PHOTOVOLTAIC SYSTEMS**

PROPOSALS DUE: May 6, 2009 by 4:00 p.m.

Submit one (1) original and seven (7) complete copies of the Proposal to:

B. J. Gibson, CPPO
Bureau of Purchases
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
bgibson@ci.portland.or.us

Refer questions to:

B. J. Gibson, CPPO
Procurement Supervisor
Bureau of Purchases
Phone: (503) 823-7665
Fax: (503) 279-3990X Email: bgibson@ci.portland.or.us

PROPOSAL TERMS AND CONDITIONS

CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER - All respondents must be certified as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Bureau of Purchases, City of Portland, prior to contract execution.

ENVIRONMENTALLY PREFERABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Proposers are encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Strategy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Proposers are encouraged to incorporate environmentally preferable products or services into their responses wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

BUSINESS COMPLIANCE - Prior to execution of the contract, the Contractor shall provide City of Portland business license number, or shall provide proof of exemption from said license, as issued by the City of Portland Bureau of Licenses. Failure to do so within twenty (20) days after the respondent receives the tender of contract may result in withdrawal of the contract award. Information related to obtaining a business license may be found on the following website:

<http://www.pdxbl.org/BizInfo/blfaq.html#licenses>.

ADDENDUMS - If, in the opinion of the Purchasing Agent, additional information or interpretation is needed by the bidders, an addendum will be issued. Any addendum or addenda issued by the Purchasing Agent, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for filing bids, Saturday, Sunday, and legal holidays not included, shall be binding upon the bidder. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

COST OF RESPONDING This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

LATE PROPOSALS Proposal responses received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Bureau of Purchases. It is the responsibility of the Proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

CANCELLATION The City of Portland reserves the right to modify, revise, or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews does not obligate the City to award a contract.

REJECTION OF PROPOSALS The City reserves the right to reject any or all responses to the Request for Proposal if found in the City's best interest to do so.

GOVERNING LAW - The provisions of any contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of law provisions. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon. All statutory, charter and ordinance provisions that are applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this contract. In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. These requirements may be found on the City of Portland's Bureau of Purchases website:

<http://www.portlandonline.com/omf/index.cfm?c=27353&>.

Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

AMERICANS WITH DISABILITIES ACT COMPLIANCE - Respondents agree that if awarded a contract, the successful Contractor will comply with all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. If any respondent requires special assistance or auxiliary aids during the proposal, evaluation or award process, please notify the Bureau of Purchases, (503) 823-6855, or TDD (503) 823-6868, at least two (2) business days prior to the required assistance.

SPECIAL CONDITIONS - Where special conditions are written in the Request for Proposal, these special conditions shall take precedence over any conditions listed under these Proposal Terms and Conditions.

PUBLIC RECORDS - All information submitted by Offerors shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which Offeror requests exception from disclosure consistent with Oregon or federal Law. Any portion of a proposal that the Offeror admits constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, ORS 192.502, ORS 646.461 or applicable federal law. If the entire proposal is marked as constituting a "trade secret" or being "confidential," at the City's sole discretion, such a proposal may be rejected as non-responsive.

If a request to inspect the proposal is made, the City will notify the Offeror of the request. If the City refuses to release the records, the Offeror agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the record be disclosed, the City will notify the Offeror in order for the Offeror to take all appropriate legal action. The Offeror further agrees to hold harmless, defend, and indemnify the City for all costs, expenses, and attorney fees that may be imposed on the City as a result of appealing any decision regarding the Offerors records.

ORAL INSTRUCTIONS - Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective bidders shall not bind the City. Any changes or revisions to the specifications shall be binding only if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

TAXES - Taxes, whether State or Federal, shall not be included in the offered prices. A tax exemption certificate will be provided by the City upon request.

PART I PROPOSAL REQUIREMENTS

SECTION A GENERAL INFORMATION

1. INTRODUCTION

In 1993, the City of Portland, (City), became the first local government in the U.S. to adopt a plan to address global warming. In 2001, the City adopted a revised plan, *The Local Action Plan on Global Warming*, with more than one hundred short- and long-term actions to reduce 1990 emissions levels ten percent by the year 2010. One section of the Plan directs Portland's City Bureaus to pursue a goal of purchasing 100 percent of City government load from new renewable resources and to install solar electric systems in City facilities when feasible. Introduction of tax incentives by the State of Oregon and the U.S. Congress along with financial support from the Energy Trust of Oregon, (Energy Trust), have set the stage to help implement our goal to install photovoltaic systems at City buildings and facilities.

2. CITY OF PORTLAND'S GOALS AND OBJECTIVES

The City desires to support the renewable energy goals proposed in *The Local Action Plan on Global Warming*, and to enhance the value of City facilities by proposing a process that makes it possible for solar electricity to be generated at them. One way to accomplish this goal is to develop a contract with a third party owner to design, build, own, operate, and maintain PV systems on City property and sell solar generated electricity to the host Bureaus. Specific objectives the City would like to attain while pursuing this goal include the following.

- Beginning in calendar year 2009, install solar electric photovoltaic systems, (PV), on roofs and other City-owned space and maximize renewable energy production.
- Contract with a qualified PV system owner with demonstrated experience in high quality system design, installation, ownership, operation and maintenance.
- Contract with a solar system owner who is able to leverage state and federal tax incentives and if applicable, the financial resources offered by the Energy Trust.
- Purchase electricity at a price near that of our present utility rates.
- Purchase electricity with a predictable annual price escalator,
- Add long-term economic value to City facilities by employing thoughtful designs and materials that are of investment grade quality and the option for ownership by City Bureaus.
- Receive an annual license fee of \$10.00 per installed kW for the use of its site.
- Support the growth of clean energy businesses in the Portland metropolitan region.
- Include solar and renewable energy educational elements where practical. Consider public interpretive kiosks, displays, signage and or web-based resources.
- Periodically review new City solar electric photovoltaic sites for subsequent phases of this project.

3. ENERGY TRUST OF OREGON PARTICIPATION

Energy Trust is an independent nonprofit organization dedicated to energy efficiency and renewable energy development. Energy Trust has provided funding for at least 900 solar electric projects in Oregon to date. Funded by a public purpose charge paid by the Oregon customers of Portland General Electric Co., PacifiCorp, Northwest Natural and Cascade Natural Gas, Energy Trust provides cash incentives that reduce the above-market costs of renewable energy projects.

Projects developed by the successful contractor under this RFP will be eligible for the Energy Trust's solar electric incentive offer in the year an incentive application is submitted to the Energy Trust, subject to all rules and limitations of the offer. If and when projects are ready to apply for Energy Trust incentives, separate applications for each site should be made using the Energy Trust's current incentive agreement at the time of application.

By law, Energy Trust incentives can only be used to fund above market costs. The City requires that Proposers shall submit a pro forma as described in Part II Section B 5.2f. For the successful contractor that submits applications for Energy Trust incentives, the Energy Trust may also review the pro forma to determine the above market cost for a project and eligibility for the standard incentive. Also, Energy Trust incentives cannot be used to support a PPA rate (electricity charge per kWh) and escalation below the current at-market electricity rate. To be eligible for Energy Trust incentives, the final PPA offer accepted by the City at the time that the contract between the City and the Contractor is signed, may not be less than the adjusted at-market electricity rate as compared on a Net Present Value basis. See Energy Trust At-Market Electricity Rate Calculation in Part I, Section C, Exhibit F, for information on how Energy Trust determines the at-market electricity rate. For determination of any final eligibility for Energy Trust incentives, the at-market electricity rate will be recalculated if there is any update to the utility price summaries posted on the

PROPOSAL NO. *

utilities' websites between the time the successful contractor is selected and the City Host Bureau and the System Owner complete their master agreement.

To be eligible for Energy Trust funding, all program and system technical requirements must be met. For information on Energy Trust solar incentives, forms and incentive agreements, procedures, technical requirements, how to qualify as an Energy Trust solar trade ally, and inspection standards, refer to www.energytrust.org/TA/solar/index.html.

4. SCOPE OF WORK

The City is seeking a company or team of companies ("Contractor") to develop the concept, interim and final design/engineering, specifications, financing, construction, materials, installation, operation, and maintenance of a turn-key, hosted solar photovoltaic system, (PV) at numerous City sites over the course of a multi-year Solar Master City Agreement. The Contractor will sell the solar generated electricity to the City Bureau hosting the system. The resulting contract will not be considered an exclusive contract on the part of the City; the City reserves the right to contract with other third-party solar photovoltaic (PV) developers during the term of this Agreement.

After a Contractor is identified based upon the evaluation criteria, the Contractor will be expected to enter into a City approved Solar Master Agreement substantially similar to that found in Exhibit A and a Solar Licensing Sub-Agreement (Exhibit B) with an individual City Host Bureau for a specific project. The project sites are listed in Exhibit E.

5. PROPOSAL INVITATION

This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is for the City of Portland on behalf of multiple City bureaus as directed by the individual bureau as identified herein in accordance with the requirements and provisions herein.

6. DEFINITIONS

While other definitions may exist in the Solar Energy development community for these terms, for purposes of this Request for Proposal, the following definitions shall apply:

- "City Host Bureau" shall mean: individual City bureaus or governmental agencies that have developed a plan and agree to host a solar generated electricity project.
- "Contractor" shall mean a company or team of companies who have been hired to develop the concept, interim, and final design/engineering, specifications, financing, construction, materials, installation, operation, and maintenance of a turn key hosted solar photovoltaic system, (PV), at numerous City sites over the course of a multi-year Solar Master Agreement .
- "Offeror" or "Proposer" shall mean: those companies, firms or individuals submitting a response to this RFP.

SECTION B WORK REQUIREMENTS

1. TECHNICAL OR REQUIRED SERVICES

The selected Contractor will perform the tasks listed below for this project. The Contractor shall be expected to work closely with designated City of Portland bureau personnel to accomplish the goals and perform the tasks as listed below:

1.1 General Information

a Using Exhibit A, the City's Solar Master Agreement, the Contractor and City will enter into an agreement for the solar installations, generally. The Contractor will be expected to provide services to multiple City Bureaus including, but not limited to, the Office of Management and Finance-Facilities Division, Bureau of Parks and Recreation, (Parks), Bureau of Environmental Services, (BES) and Portland Water Bureau (Water). Using Exhibit B, Solar Licensing Sub-Agreement as a template, the Contractor will develop agreements with the individual City Host Bureaus for the specific solar installations. Under this arrangement, the Contractor designs, builds, owns, operates, and maintains a PV system as well as sells the generated electricity to the City Host Bureau. No City funds will be contributed toward the system cost.

The City intends to select one solar Contractor as a result of this RFP; however, the resulting award shall not be considered an exclusive agreement between the Contractor and City.

PROPOSAL NO. *

b. A list of 8 sites proposed for solar electric photovoltaic systems under the proposed Solar Master Agreement is included as Exhibit E. Although the sites listed vary widely in size and setting, Proposers are, nonetheless, expected to develop their response in a "one size fits all" fashion with pricing for three utility rate schedules – PGE Schedules 89P and Schedule 83S and PP&L Schedule 28. Proposers' cost response shall include the same price and escalator by utility rate schedule regardless of size, solar access, location, or installation difficulty.

Exhibit E should not be considered representative of the size, setting or number of facilities that will be proposed for future installation. Pricing for future projects (i.e., those not listed in Exhibit E and installed as early as the second half of 2009) will be negotiated between the Proposer and the City Bureau as an amendment to this Agreement.

c. The City requests that the Contractor target installation of sites identified in Exhibit E by December 31, 2009. Proposers should demonstrate how this goal will be accomplished.

d. If the Proposer chooses to use solar tax incentives, their proposal response should reflect the value of solar tax incentives. There is no obligation for the Proposer to use solar tax incentives. Proposals should identify the level of Energy Trust incentives proposed to achieve the respondent's PPA rate offer subject to the limits described in Part I, Section A.3. For the purpose of calculating prices for this Solar Master Agreement, the following assumptions for tax incentives will be used:

1. Federal Tax Credits and Depreciation: Use 2008 incentive values, anticipating extension into 2009.
2. Oregon Business Energy Tax Credit, BETC: Assume the Maximum Eligible Cost under BETC using the 8001 kW step incentive starting at \$8.30 per watt.

e. Changes in Federal investment tax credits and depreciation, Oregon energy tax credits, or Energy Trust programs, if any, prior to acceptance of the contract and in subsequent years will be addressed during contract negotiations.

f. Ownership of the electricity's Renewable Energy Certificates (RECs) or other environmental attributes will be transferred to the City Host Bureau, unless transferred to another entity, such as Energy Trust, in exchange for funding.

g. The Contractor shall be required to pay the City Host Bureau an annual license fee of \$10.00 per installed kW, for the use of the Site (reference Part I, Section A. 2).

1.2 Design, Engineering, Permitting and Incentives

The Contractor shall design and engineer solar PV systems for robust electricity production, taking into consideration the objectives of the City Host Bureau, proposed installation site, available solar resource, installation costs, aesthetics, structural limitations, roof condition and other relevant factors.

For each solar PV site, the Contractor shall submit design documents, "Site Review Package", for City Host Bureau review. Those documents must include the following information:

- System description.
- Equipment details and descriptions.
- Plans with the PV system layout, including racking, module placement, conduit raceways, conduit sizes, module spacing, etc.
- For ground mounted systems, a vegetation and maintenance plan for the ground beneath and surrounding the system modules and support structures.
- Single line diagrams indicating system layout and all required connections to the utility, specifying the inverter models and ratings.
- Length of warranty for major components compared to the industry average.
- The Contractors written specifications for procuring and installing the equipment.
- Professional Engineer verification that the system will meet wind-load, seismic, and structural requirements.
- Mounting details and appropriate certification. *Note: Portland's Bureau of Development Services has been reluctant to approve building permits for ballasted mounting systems. Proposals for ballasted mounting will be considered on a case by case basis.*

PROPOSAL NO. *

- For mounted systems, address what accommodations the PV owner will make when the City desires to replace the existing roofing material.
- Electrical grid interconnection and approved Net Metering Agreement with the local utility.
- Controls, monitors and instrumentation.
- Web-based monitoring.
- Educational displays or features.
- Site Safety Plan
- Erosion Control Plan

Site Review Package shall be submitted in a format suitable for each City Host Bureau, determined at the time the City Host Bureau is engaged in discussions for the site to be developed. The Site Review Package shall be submitted to the City Host Bureau prior to submission to the Bureau of Development Services. As the Contractor works with the Bureau of Development Services to obtain necessary permits, changes to the Site Review Package may be requested of the Contractor. In order to ensure that the changes are satisfactory to each City Host Bureau, these proposed changes must be reviewed and approved by the appropriate City Host Bureau. The Contractor shall be responsible to ensure that the review process occurs. Prior to the construction at a particular site, the City Host Bureau will issue a Site Access Release signed by the appropriate City Host Bureau project manager.

The Contractor shall identify an appropriate location for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:

- Compatibility with existing facilities and uses
- Ease of maintenance and monitoring
- Efficient operation
- Low operating losses
- Secured location and hardware

The Contractor shall secure from the Bureau of Development Services (BDS) and appropriate utility company all required rights, permits, approvals and interconnection agreements at no additional cost to the City including but not limited to a Net Metering Agreement. The City will become the signatory on these agreements and permits only where required by law. The Contractor shall discuss particular site details with the appropriate City Host Bureau.

The Contractor shall complete and submit to the appropriate entity in a timely manner all pre-applications, post applications and other documentation required to qualify each installation for available rebates and tax credits.

1.3 PV Module, Inverter and Other Plant Component Specifications

The Contractor shall install PV panels, inverters and other components to meet the most current version of the Solar Electric System Requirements of the Energy Trust of Oregon, available at:

<http://www.energytrust.org/TA/solar/index.html>

In addition to Energy Trust requirements, Power Modules shall be warranted for at least 20 years with a minimum 80% performance at 20 years. Modules shall be rated/proposed at *minimum* power level and not a +/- tolerance figure. Individual modules exceeding 175 W are preferred.

Roof rack systems that are hinged or otherwise *easily* accommodate future reroofing are strongly encouraged at roof sites.

1.4 Installation

The Contractor shall supply all equipment, materials and labor necessary to install the solar PV system and integrate them with other power sources.

Access to the site must be pre-approved by the City Host Bureau and coordinated through the facility site manager or their designee.

This project is for a public work and is subject to ORS 279C.800 to 279C.870, the Oregon Prevailing Wage Rate (PWR) Law. It is the City's expectation that the installer will meet Prevailing Wage Requirements as if the project were installed by the City of Portland. Pursuant to OAR 839-025-0020(3) and (4), the existing prevailing wage rates applicable to this project are incorporated within these specifications by reference. General information about PWR as well as the current and past prevailing wage rates may be found at:

http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml

PWR forms may be found at: http://www.boli.state.or.us/BOLI/WHDPWR/W_PWR Forms.shtml

1.5 Electrical Interconnection

The Contractor shall supply and install all equipment required to interconnect the solar PV systems to the City Host Bureau and the distribution utility system. The Contractor shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Contractor.

If after the Net Metering application (See Exhibit D), has been submitted, the electric utility determines that the PV system will trigger new distribution system upgrades and significant expense, then the Contractor is not obligated to install the PV system. However, the Contractor and City Bureau representatives will consider these unexpected costs and determine if there is mutual benefit in reconsidering or modifying the project. If so, the City reserves the right to negotiate with the Contractor to modify the terms and conditions of the Contract.

1.6 Commissioning and Acceptance Test for Initiating the Power Sales Agreement

During the start-up, the City and/or its independent representative, shall observe and verify each system's performance. Each City Host Bureau is encouraged to have a representative present at this test. Valuable information shall be provided that will be needed if and when emergency/shut off conditions occur during the contract period. All testing should be at the Contractor's expense. City shall have the right to observe testing and confirm testing at its cost if it is deemed necessary.

Required commissioning and acceptance test services includes:

- Starting up the solar PV system until it achieves the performance requirements of the power sales agreement.
- Conducting the performance testing over a consecutive 24-hour period.
- Conducting the successful delivery of power within 30 days following the completion of the system.

1.7 Operation, Maintenance, and Roofing

The Contractor will be responsible for the operation and maintenance of the solar facility in a manner consistent with prudent operating practices. The Contractor is solely responsible for performing all maintenance and repairs necessary to keep the entire system in good operating condition and shall be responsible for wind load, seismic, and structural inspections. . The Contractor will take all reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the system and will comply with all applicable laws, rules, regulations, and permit requirements. Contractor shall be advised that each City Host Bureau may have specific laws, rules, regulations, and permit requirements that apply to it only, and the Contractor shall familiarize themselves with these and what needs to be done to adhere to them (e.g., Water Bureau Well Head Protection Program).

If solar photovoltaic systems are to be installed on a roof, the Contractor shall hire mutually agreed upon competent personnel to perform a roof inspection to determine the condition of the roof. The roof shall meet wind-load, seismic, and structural requirements. The Contractor shall also hire appropriate competent personnel qualified to perform a structural analysis of the roof i.e. Engineer in the appropriate area of expertise. Results of the roof inspection and the structural analysis will be reviewed by the Contractor and the City. Costs of roof inspections and structural analysis shall be borne by the Contractor.

If roof penetrations are required by the installation of the solar photovoltaic systems, they shall be performed by qualified roofers, and the roofing penetrations shall be warranted by the roofing company for a minimum of twenty years. Recognizing that the PV system will likely outlast composition and membrane roof systems, Proposers are strongly encouraged to utilize hinge-rack systems or other rack designs that accommodate re-roofing with minimal disturbance to the PV system and minimal added cost due to the presence of the solar system.

If solar photovoltaic systems have been installed on roofs, the Contractor will be required to perform wind-load, seismic, and structural roof inspections, related to the solar photovoltaic systems, in each of the first three years of operation and if no problems are discovered, then on every third year thereafter. The structural inspections must be completed by a licensed Professional Engineer in the appropriate area of expertise, and the roof inspections must be completed by competent personnel to perform a roof inspection. Documentation of these inspection results must be transmitted to the City Host Bureau by June 30 of each year and otherwise shall be on file with the Contractor and available for review at anytime.

1.8 Manuals and Drawings

The Contractor shall provide three (3) sets of site-specific operation, maintenance and equipment and parts manuals for each installed solar PV system. The manuals shall cover all components, options and accessories supplied. They shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment at the

site. The Contractor shall also provide three (3) sets of as-built drawings in the appropriate format, hard copy and electronic, as specified by the City Host Bureau on whose project they are working. These products shall be delivered prior to acceptance of the system. The Contractor owns, operates, and maintains all systems.

1.9 City's Purchase Option

At the end of the Contract term, or a mutually agreed upon date, the City shall have the option to purchase the solar electric photovoltaic system at fair market value. The parties will attempt to agree on a fair market price for the system by themselves, but if they are unsuccessful, the fair market value will be determined by a mutually agreed upon independent energy appraiser or mutually agreed upon expert in the field.

1.10 System Removal Fund

If the City does not choose to purchase the solar electric photovoltaic system, the Contractor will be required to remove the solar electric photovoltaic system by the expiration date of the Contract. This task shall be completed in accordance with all applicable laws and the site shall be returned to its original condition, with the exception of attached system mounting pads or other attachments affixed to the roof, less nominal wear, at no cost to the City. In order to accomplish this task, the City will require the Contractor to establish a System Removal Fund equal to \$250.00 per installed kW. The Contractor shall make this fund available either through the purchase of a bond or establishment of a line of credit to cover the removal costs. Verification of the bond or establishment of a line of credit shall be provided to the City Host Bureau at the time the Contractor and the City are performing commissioning and acceptance testing according to 1.6 Commissioning and Acceptance Test for Initiating the Power Sales Agreement. The verification must be in a form acceptable to the City Attorney. Regardless of the size of the System Removal Fund, sufficient funds shall be budgeted and available at the end of the agreement to cover all expenses for removal of equipment from the City site. The System Removal Fund shall be set up in a fashion that makes funds available to the City even if the contractor defaults or goes bankrupt. Proof of bonding capability or establishment of a line of credit shall be documented in the cover letter provided with the proposal.

Any fund remaining in the System Removal Fund after the Contractor's work has been completed, and is acceptable to the City, shall be returned.

If the City chooses to purchase the solar electric photovoltaic system (i.e. exercise its buy-out option), the parties mutually agree that the System Removal Fund of \$250 per KW will be applied to the City's purchase payment.

1.11 Warranties and Guarantees

The Contractor shall provide the following warranties:

- a. Photo voltaic Power Modules shall be warranted for at least 20 years with a minimum 80% performance at 20 years. No more than 10% power output degradation in the first 10 years and no more than 20% power output degradation in the first 20 years from date of purchase will be acceptable. Non-performing panels shall be replaced by the Contractor with equal or upgraded panels at no cost to the City. It is anticipated that technology will change over the course of 20 years.
- b. 10-year inverter warranty
- c. 20-year roof penetration and building penetration warranty. Roof penetrations shall be made after consultation with the City's roofing contractor or roofing specialist as provided by the City Host Bureau, and they shall be completed in conformance with the existing roof warranty
- d. All exposed quick-connect wiring shall be warranted against UV degradations for a period of 20 years.
- e. All metals used in the construction of the system including, but not limited to, PV modules and array support structures shall be warranted against degradation for 10 years.
- f. Comprehensive re-commissioning of the system will take place prior to the end of PPA contract if the City elects to purchase the system. Comprehensive re-commissioning tasks shall allow the City to purchase the system in a working condition.

1.12 Public Education and Monitoring

Public education and on-line monitoring of the system performance are important elements of the City's renewable energy goals. The Contractor shall provide a turnkey data acquisition and display system that allows the City and public to monitor and display historical and live electricity generation for each site. The system should allow the City to track cumulative power generated. The regularly collected data should reflect, but not be limited to the following:

- a. System performance showing instantaneous output in kW, daily, year-to-date output in kWh
- b. Display of accumulated output in a user friendly format
- c. System availability and weather related data (ex: ambient temperatures, irradiation, wind speed)
- d. Capacity factor

e. Degradation

The data system shall be designed for turnkey, remote operation. Data shall be transmitted via internet or telephone from the site to a server. Data storage, management and display will be the responsibility of the Contractor. The data system must not require that a dedicated or always-on personal computer be located at each site.

The Contractor and the City Host Bureau will work together to create their plan for public education and promotion of solar and renewable energy. The Contractor is encouraged to employ kiosks, interpretive signs, and or displays of non-working PV modules that visitors can examine up close based on the City Host Bureau approval.

2. WORK PERFORMED BY THE CITY

City staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide information as required. The City has assigned a general project manager who will be responsible for the initial contract. Once the contract negotiation has been completed, each City Host Bureau will assign a project manager for the bureau-specific installation.

The Contractor will be provided with record drawings, CADD files, solar surveys and other information required to complete a specific City Host Bureau project. City staff shall review submitted reports, interim findings, contract documentation, and any other documentation pertinent to the project. The Contractor and appropriate regulator staff, including but not limited to City staff, shall be responsible for completing any inspection work that is required. Regulator staff may include City staff such as the Bureau of Development Service, but it may not necessarily include the City Host Bureau.

3. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products which are to be delivered to the host Bureau such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Reports produced shall require a stamp by an Oregon P.E., in the pertinent area of expertise. Deliverables and schedule for this project shall include, but not be limited to the following:

- a. Design, Engineering, Permitting and Incentives--Design documents as requested in Part I, Section B.1.2
- b. Electrical interconnection—Results of application, study, and testing procedures as requested in Part I, Section B.1.5.
- c. Commissioning and Acceptance Test for Initiating the Power Sales Agreement—Results of required commissioning and acceptance test services as requested in Part I, Section B.1.6.
- d. Operation and Maintenance—Results of structural and roof inspections requested in Part I, Section B.1.7.
- e. Manuals and Drawings—Three (3) sets of site-specific operation, maintenance, equipment and parts manuals for each installed solar PV system as requested in Part I, Section B.1.8.
- f. System Removal Fund and Roof Repair/Replacement—Annual verification that monies are accruing to the System Removal Fund as requested in Part I, Section B.1.10 above.
- g. Warranties and Guarantees—Signed copies of warranty and guarantee agreements as requested under Part I, Section B.1.11.
- h. Public Education and Monitoring—Demonstration of the public education and monitoring site as requested in Part I, Section B.1.12 above.

All deliverables and resulting work products from this contract will become the property of the City of Portland. The above listing shall be considered the minimum deliverables with each City Host Bureau specifying and additional deliverables required for their specific project.

4. PLACE OF PERFORMANCE

It is assumed that the Contractor will perform the requested work for a City Host Bureau both off-site and at the City Host Bureau facilities. It is anticipated that the Contractor may want to complete routine paperwork tasks at its office. The City does not expect the Contractor to assemble the solar photovoltaic systems off site. The Contractor's work may include numerous field visits to project sites and/or locations that house similar infrastructure. Construction work shall be completed on and off-site depending on the particular Host Bureau's desire. The Contractor will be expected to attend meetings at City Host Bureau's facilities and/or at a non-Bureau facility should the Bureau desire that.

5. PERIOD OF PERFORMANCE

The City anticipates having the Contractor begin work (with the City Host Bureaus) within a reasonable time period from execution of the City Host Bureau's Solar Facility Licensing Sub-Agreement through and including the submittal of final deliverables to the City occurring as defined by each City Host Bureau on a project by project basis. The City

PROPOSAL NO. *

Charter, in general, imposes five to ten year limits on the duration of City contracts (reference City Charter 2-105(a)(3) whereas property contracts, are limited as to term (ref. City Charter 2-105(a)(6)). See attached Exhibit B – Solar Licensing Sub-Agreement. The duration of any renewable energy contract with the City, therefore, may depend upon the type of arrangement proposed.

The Solar Master City Agreement includes warranty and maintenance work for the duration of the contract period. The City Host Bureau may, at the end of the contract period, negotiate additional terms and conditions of the warranty and maintenance work on a case by case basis.

6. INSURANCE – PROOF OF COVERAGE

Work shall not commence until all insurance requirements have been met subject to the approval of the City Attorney as to the adequacy of protection and certificates thereof have been filed with the Purchasing Agent or the Auditor. Proof of insurance shall be required during the entire length of the contract, and it shall be documented in the cover letter submitted with the proposal.

Insurance - Public Liability and Property Damage

The Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Contractor's work under this contract

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation

Prior to the performance of any work under a contract awarded by the City, the Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

Certificate of Insurance

As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

7. PUBLIC SAFETY

Public safety may require limiting Contractor access to work sites, public facilities sometimes without little advance notice. The Contractor shall anticipate delays in such places and include the cost of delay in the cost of its proposal. Host City Bureaus may require site check-in each time they visit the project site. The Contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel and other City site staff. City project managers have discretion to require the Contractor's employees and

agents to be escorted to and from any public office, facility or work site if required. Additional agreements and special clearances may be required that relate to security issues at specific Bureau facilities. Exhibit C contains a copy of the City of Portland Security Clearance forms. They are only provided for reference purposes at this time.

SECTION C ATTACHMENTS

1. Exhibit A—SAMPLE CITY MASTER SOLAR AGREEMENT

The sample Master Solar Agreement as shown in Exhibit A is the City's contract for these services and will be used as a result of this selection process.

2. Exhibit B - SAMPLE SOLAR LICENSING SUB-AGREEMENT

The sample Solar Facility License Agreement, shown as Exhibit B is the City's contract for these services and will be used in concert with the Master Solar Agreement as a result of this selection process.

3. Exhibit C— CITY OF PORTLAND SECURITY AGREEMENTS

There are five (5) documents provided as part of this Exhibit. They are for reference purposes only, and they are posted to the FTP site: <https://ftp01.ci.portland.or.us>.

4. EXHIBIT D—AGREEMENT FOR NET METERING AND INTERCONNECTION SERVICES (LEVEL 1, 2, AND 3 INTERCONNECTION)

This document is provided for reference purposes, and they are posted to the FTP site: <https://ftp01.ci.portland.or.us>.

5. EXHIBIT E - PROJECT SITES

Four City Bureaus--Portland Water Bureau, (PWB), Office of Management and Finance-Facilities Division, Parks and Recreation (Parks) and the Bureau of Environmental Services, (BES) are presently interested in installing solar electric photovoltaic systems at specific sites in the City of Portland. Other City Bureaus may desire to install additional solar photovoltaic systems at new sites during the period of the City Master Solar Agreement; these sites are not listed in Exhibit E. Solar Surveys are posted to the FTP site: <https://ftp01.ci.portland.or.us>.

6. EXHIBIT F – CITY OF PORTLAND NET PRESENT VALUE AND PRO FORMA SPREADSHEETS AND AT-MARKET ELECTRICITY RATE

The Proposer shall submit a City of Portland 20 year Net Present Value spreadsheet as provided at the listed FTP site: <https://ftp01.ci.portland.or.us>

The Proposer shall submit a completed Pro Forma Spreadsheet with their proposal response, using the Energy Trust Valuation Model spreadsheet as provided at the listed FTP site: <https://ftp01.ci.portland.or.us>. The completed Pro Forma Spreadsheet will be evaluated by the City. Part II, Section B, 5.2.f of this RFP describes the City of Portland 20 Year Net Present Value spreadsheet, and the pro forma spreadsheet. The Energy Trust At-Market Electricity Rate Net Present Value Calculation is included to assist respondents to ensure their PPA rate is not below the at-market electricity rate.

7. EXHIBIT G – CERTIFICATION STATEMENT

A signed copy of the Certification Statement must be attached to cover letter when submitting the proposal response.

PART II PROPOSAL DEVELOPMENT

SECTION A PROPOSAL PREPARATION

1. PRE-PROPOSAL MEETING AND SITE VISITS

There will be no pre-proposal meeting scheduled for this Request for Proposal. A series of **non-mandatory** site visits will be scheduled for perspective Proposers. The site visits shall proceed from one site to another, and therefore it is important that the Proposers be on time for the morning and afternoon sessions. It is recommended that Proposers bring pertinent personnel and sub-contractors to participate in the site visits. The dates and start times for the site visits are as follows:

- a. April 7, 2009, Tuesday, 8:30 a.m.

NE Police Precinct, 449 NE Emerson
Dishman Community Center, 77 NE Knott Street
Kerby Building, 2929 N. Kerby

- b. April 7, 2009, Tuesday, 12:30 p.m.

Multnomah Arts Center, 7688 SW Capitol Highway
PGE Park, 1844 SW Morrison **Please enter at the main entrance along 20th Avenue.**

- c. April 8, 2009, Wednesday, 8:30 a.m.

Portland Water Bureau Groundwater Wells #8 and #11, 16400 NE Airport Way
Columbia Boulevard Water Treatment Plant Dry Weather Clarifier Location #1 only
5001 N. Columbia Boulevard

2. INVESTIGATION

The Proposer shall make all investigations necessary to inform itself regarding the work or services to be furnished

3. QUESTIONS OR CLARIFICATIONS

It shall be the Proposers responsibility to ask questions, request changes or clarifications, or otherwise advise the City of Portland, Bureau of Purchases if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

Every attempt shall be made to ensure that the Proposer receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all Proposers will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Questions and requests for clarification regarding this Request for Proposal must be directed in writing, via email or fax, to the person listed below at least ten (10) calendar days prior to the proposal due date. Therefore, Proposers are advised that any questions received less than ten (10) calendar days prior to the RFP opening date may not be answered.

B. J. Gibson, CPPO
Bureau of Purchases
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
bgibson@ci.portland.or.us

Phone: (503) 823-7665

Fax: (503) 823-6865

If, in the opinion of the Purchasing Agent, additional information or interpretation is needed by the Proposers, an addendum will be issued. Any addendum or addenda issued by the Purchasing Agent, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for submitting the proposal, Saturday, Sunday, and legal holidays not included, shall be binding upon the respondent. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

4. CONTRACT REVIEW

The Contract as attached hereto contains the terms and conditions that will govern this Contract between the City of Portland and the successful Contractor(s). The City of Portland is not inclined to negotiate any portion of this contract, however, if a Proposer believes any of the terms and conditions contained in the City's contract are unnecessarily restrictive, limit competition, or would like to request that specific terms and conditions contained in the contract document be considered for negotiation, they shall submit a written request for negotiation to the City at least seven (7) working days prior to the proposal due date as indicated above.

The request shall identify the specific provision the Proposer would like to negotiate, an explanation of why the Proposer believes the provision should be a negotiable provision, and the suggested revised language. Requests that are not submitted in this format may not be considered. **Requests that state the entire contract be negotiated will not be considered.** If the City decides that a contract term can be changed, or is willing to consider negotiation of a term, an addendum will be issued. If no addendum is issued, the City will not consider negotiation of its standard contract terms.

THIS WILL BE THE PROPOSER'S ONLY OPPORTUNITY TO TAKE EXCEPTION TO ANY OF THE TERMS AND CONDITIONS CONTAINED WITHIN THE CONTRACT AND TO REQUEST THE NEGOTIATION OF PROVISIONS CONTAINED IN THE CONTRACT. **ANY PROPOSAL WHICH TAKES EXCEPTION TO TERMS AND CONDITIONS OF THE SAMPLE CONTRACT THAT HAVE NOT BE IDENTIFIED BY ADDENDUM AS SUBJECT TO NEGOTIATION OR WHICH MAKES THE PROPOSAL CONTINGENT UPON ACCEPTANCE OR NEGOTIATION OF OTHER TERMS AND CONDITIONS SHALL BE DEEMED NON-RESPONSIVE AND THE PROPOSAL SHALL BE REJECTED.**

5. PERMITS AND LICENSES

The successful Contractor(s) shall include in their proposal the cost to obtain or maintain all permits, certifications and licenses that may be required to perform the contract.

6. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING

The Proposer agrees to extend identical prices and services under the same terms and conditions to all public agencies. Requirements stated herein reflect the City of Portland usage only.

A public agency wishing to utilize like services will execute its own contract with the awarded Contractor for its requirements. The Contractor shall provide quarterly usage reporting of the City of Portland as well as that of other public agencies to the City of Portland, Bureau of Purchases. Any respondent by written notification included with their proposal, may decline to extend the services, prices and terms of this RFP to any and/or all other public agencies.

SECTION B PROPOSAL SUBMISSION

1. PROPOSALS DUE

By submitting a proposal, the Proposer agrees to provide all services specified within the RFP, at the times and prices indicated, pursuant to all requirements and specifications as contained therein.

Sealed proposals must be received in this office no later than the date shown on the cover of this solicitation. The outside of the envelope shall plainly identify the subject of the proposal, the RFP number and the name and address of the Proposer. Responses received after time or date listed herein shall not be considered. Proposals received after the scheduled closing time for filing will be returned to the Proposer unopened.

2. PROPOSAL SUBMISSION

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Proposers capabilities to satisfy the requirements of the RFP and must be easily reproducible. Emphasis should be on completeness, clarity of content, and cost effectiveness of the proposal. The proposal response must provide adequate information to allow the selection committee to apply the evaluation criteria as identified in Part III, Section A.1.

All pages of the proposal response must be numbered consecutively. The proposal response shall not exceed 60 pages (30 pages if double-sided) in length, **including** all Attachment materials. The proposal must be organized in accordance with the list of proposal contents. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

PROPOSAL NO. *

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

All submittals will be evaluated on the completeness and quality of the content. Only those firms providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

Security and confidentiality of the transmitted data: For purposes of this proposal submission, one (1) complete original printed copy of the proposal shall be submitted along with seven (7) exact copies. The entire proposal and proposal copies shall be received at the place and on or before the time and date specified on the first page of the proposal document.

4. CONFLICT OF INTEREST

A Proposer submitting a proposal thereby certifies that no officer, agent or employee of the City who has a pecuniary interest in this RFP has participated in the contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other respondent of the same request for proposal, and that the respondent is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

5. PROPOSAL ORGANIZATION

The Proposers must provide all information as requested in this Request for Proposal (RFP). Responses must follow the format outlined in this RFP. Additional materials in other formats or pages beyond the stated page limit(s), including Attachments, may not be considered. The City may reject as non-responsive at its sole discretion any proposal or any part thereof, which is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

- Cover Letter
- Table of Contents * (Include a clear identification of the material by section and by page number)
- Executive Summary * (Proposer may use this section to introduce the proposal or to summarize the key provisions of the Proposal)
- Project Team and Qualifications
- Approach to Project and Schedule
- Diversity in Employment and Contracting Requirements
- Sustainability Practices
- Project Cost
- Attachments

*** optional**

Proposers should include the following items (Sections 5.2.a through 5.2f) in their proposal response and all submittals must fall within the maximum page count, including Attachments:

5.2. a Cover Letter

By submitting a response, the Proposer is accepting the Proposal Terms and Conditions of this Request for Proposal (See page 2 of the RFP).

The Cover Letter must state the name of the person(s) authorized to represent the Proposer in any negotiations, the name(s) of the person(s) authorized to bind the Proposer to both its proposal, cost schedule and sign any contract that may result, the contact person's name, mailing or street addresses, phone and fax numbers and email addresses. A legal representative of the successful firm, authorized to bind the firm in contractual matters must sign the Cover Letter and the Proposal response. Additionally, the cover letter must include the following:

- A detailed statement of understanding of the project.
- Name, title, address, telephone number, FAX number, and email address of the person, or persons, to contact who are authorized to represent the Proposer and to whom correspondence should be directed.
- Firm's federal tax ID number.

PROPOSAL NO. *

- List of chosen subcontractors, if any and their M/W/ESB status.
- City of Portland business license number.
- A statement indicating the proposal is valid for ninety (90) days following proposal opening.
- A completed and signed Certification Statement attached to the Cover Letter (reference Exhibit G).
- Proof that the Proposer can provide the necessary funding for a system removal fund either through a bond or line of credit at the time of the commission and acceptance test as referenced in Section 1.6 Commissioning and Acceptance Test for Initiating the Power Sales Agreement.
- Proof that the Proposer can provide the required insurance throughout the life of the contract.

5.2 b Project Team and Qualifications

List the Project Manager and all key personnel (including sub-contractors) and management to be utilized for the work. Include a description of education, certificates or licenses, professional background, experience, skills, expertise and training for the type of services required. If the designated Project Manager for work completed as a result of this RFP is a NABCEP certified Solar PV Installer that shall be considered a plus. Provide the names, addresses, contact information, and Contractor license numbers for all specified construction subcontractors, as well as signed letters from the subcontractors confirming their intent to participate in the project. Samples of previous project products can be submitted. Resumes and samples should only include project experience relevant to the scope of work outlined in this RFP.

Proposal response must include specific confirmation that all system installations will be performed by a recognized solar trade ally of Energy Trust. Installation services must be performed by a recognized solar trade ally of Energy Trust in order for projects to be eligible for Energy Trust incentives.

Describe the demonstrated experience of the firm and its principals in developing, specifying, and constructing solar electric energy systems, particularly those of a commercial/industrial scale, along with a discussion of how experience on previous projects relates to those projects listed in this RFP. Firms that are not general contractors registered with the Oregon Construction Contractors Board, and in good standing, shall not be considered qualified to propose on this project. Firms that cannot demonstrate that the principals have designed and installed PV projects totaling at least 500 KWp DC of grid-connected capacity are unlikely to receive sufficient points on this criteria to receive the award of a contract.

The Proposer must provide at least three (3) references for projects of similar scope, size and complexity that have been completed within the last (5) five years. References must include the contact person's name, agency, address, telephone number, their role in the project (e.g. project manager, etc.), name of the project and when the work was done. The Proposer is also asked to identify all projects awarded within the past three (3) years that have not been completed with a statement explaining why the project was not completed and to include appropriate references to verify the information

Provide a statement describing the capability to complete all phases of the Project within the time schedule necessary to receive solar tax incentives and rebates discussed in Part I, Section B, 1.1.C.

Provide a detailed description of the ownership model for the solar system, addressing whether that ownership structure is proposed or already established and who the system owners are. Include a detailed statement demonstrating your ability to fully finance the installations, including sources of equity or debt. Describe your ability to acquire and lock in pricing for PV modules, inverters and other system components for installation in CY 2009. Include a detailed description of your ability to fully utilize federal investment tax credit and depreciation incentives. Address whether the owners will use the Oregon BETC directly or utilize a BETC Pass-Through partner. If a Pass-Through Partner will be used, describe if the Partner has been identified, their name and their level of commitment to participate in these PV projects.

5.2. c Approach to Project and Schedule

Proposal response shall include project background and support information that will demonstrate your company's commitment to professional design, high performance components and materials and quality workmanship. Address preliminary PV system design and sizing, cross section mounting standard detail, vegetative treatment at ground mounted sites, projected monthly KWh production data, projected annualized cost savings for the City, commissioning, system operation and maintenance plan, PV Panel and component warranties, annual module degradation, and the proposed long-term monitoring and report program associated with the hosted PV system. The response shall address your approach to roofing penetrations, the roofing contractor and warranty. Also address roof racking and demonstrate how proposed design will easily accommodate future reroofing.

Proposers shall submit a work plan that will outline how the Proposer's team intends to prepare and complete all tasks identified in their proposal, and anticipated timelines for each task for this project. This is an estimated timeline

PROPOSAL NO. *

upon which to base Solar Services Agreement negotiations and not a binding schedule. The project schedule poses a significant challenge and a high priority will be given to clearly identifying, tracking, and ensuring that all tasks associated with these milestones are met or achieved. Include the following information:

- a. A detailed explanation of Proposer's approach to the work and the techniques the Proposer expects to use. This should include an explanation of any modifications of the work items and scope of work presented in this RFP. Document your use of Portland area based employees and/or subcontractors.
- b. Describe how your firm would propose to use City personnel, if at all, to assist you during the project and indicate the approximate time requirement.
- c. Please provide any additional information about Proposers project approach that would be beneficial to the selection committee.
- d. Outline a work plan and related time schedule for each significant segment of the work. Delineate the project scheduling process your firm uses. Use some or all of the projects listed in 5.2.b, as well as other projects (if necessary), as specific examples, which demonstrate your ability to secure long term stable financial backing in a timely manner and complete commercial/industrial scale electrical construction projects on time.
- e. Proposers shall state if they have the capability and desire to offer commercial grade solar water heating installation.

5.2. d DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS

The City values diversity in its workforce and in the workforce of those who contract with the City and has a significant interest in extending contracting opportunities to Minority, Women, and Emerging Small Businesses (M/W/ESB) at both a prime and subcontracting level. The City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City contracts.

The City recognizes that there are several ways to meet this goal. The list below is provided as a catalyst to generate ideas on how the Proposer may meet this goal:

- Internal work force, Equal Employment Opportunity, technical training and mentoring;
- Emphasize the way this project will provide developmental opportunities and sustainable business growth for certified M/W/ESB;
- Point to a long-term history of strategic alliances and partnership with M/W/ESBs that will be used to perform a commercially useful function on this project;
- Placing a particular emphasis on a project-specific partnership with M/W/ESBs;
- Carving out a meaningful scope of work based on the expertise of their M/W/ESB partner firm(s).

All Proposers responding to this solicitation shall address the following factors:

- a. MBE, WBE & ESB Certification
- b. Indicate if your firm is currently certified through the State of Oregon as an MBE, WBE or ESB. If no, what percentage of the project will be subcontracted out to M/W/ESBs?
- c. EEO & Workforce Diversity
 - Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm.
 - Describe your existing relationships with M/W/ESB firms including a description of your supplier diversity program.
 - If your company currently has under representation of minorities or women within your current workforce, describe how over time you propose to remedy the underutilization.
 - Discuss any project-specific opportunities for technical training and/or employment of underrepresented groups you would commit to. Are there other outreach (through local schools or community-based organizations) that you consider to be viable in light of the size and scope of this project? What resources might your firm address to such needs?

PROPOSAL NO. *

The City expects thoughtful consideration to be given to which EEO/Diversity and M/W/ESB program components make sense to individual Proposers on this particular project.

- a. Provide a narrative description of the company's experience in promoting participation on the part of Minority-owned, Women-owned and Emerging Small Business (M/W/ESB) enterprises as partners, consultants or suppliers on previous projects.
- b. Include a description of your firm's supplier diversity program:
 - How long has it been in existence and what were the driving factors for establishing the program?
 - What results has it had to increase your company's M/W/ESB participation?
 - Who is the individual responsible for your company's M/W/ESB initiative? Provide their experience with the M/W/ESB community.
- c. Discuss any innovative or particularly successful measures that your firm has undertaken to work with M/W/ESB firms on other projects.
- d. Include a list of those certified M/W/ESB firms with which your firm has had a contractual relationship during the last twelve (12) months.
- e. Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship with a certified M/W/ESB firm:
 - How do the M/W/ESB(s) that you partner with benefit from the relationship with your firm?
 - Describe what you consider your first-tier diversity solution where you utilize a certified M/W/ESB firm as the prime contractor and your company works as an alliance partner.
 - How do you evaluate the credentials of your M/W/ESB suppliers?
 - Describe how your firm could increase the utilization of certified M/W/ESB firms in service of the City contract if you are the winning Proposer?

Describe your outreach plan to M/W/ESBs for this project.

If your firm is not utilizing existing relationships as described above or is able to undertake additional outreach to improve opportunities for minority, women, and emerging small business, describe your outreach program or plan for obtaining maximum utilization of M/W/ESB firms on this project. Proposers not drawing on existing relationships with M/W/ESB firms should describe what outreach efforts will be pursued in order to make contracting opportunities available to M/W/ESBs.

A suggested set of possible actions is listed below but firms may propose their own plan to make subcontracting opportunities available to M/W/ESBs:

- Identify probable subcontracting opportunities by type of work, potential size of subcontract, etc.,
- advertising in the *Daily Journal of Commerce*, *Skanner*, *Oregonian*, *Observer*, *El Hispanic News*, *Just Out*, *Asian Reporter*, and/or other trade publications to notify potential M/W/ESBs and other diverse groups of contracting opportunities;
- Utilize certified M/W/ESB firms from the State of Oregon certification list, or other source, as a basis for direct outreach in likely subcontracting areas.
- Meet with potential M/W/ESB subcontractors in order to encourage collaboration and partnering.
- Document proposals received from M/W/ESB firms and identify proposal(s) accepted and reasons for rejection of such proposals, if any proposals are rejected.
- Provide mentoring, technical or other business development services to M/W/ESB team members.
- Initiate other efforts as might be useful for this particular project.

M/W/ESB COMPLIANCE AND REPORTING

PROPOSAL NO. *

If your company will be utilizing M/W/ESBs on this project, please list those firms and detail their role within the present solicitation. The City will enforce all EEO/Diversity and M/W/ESB commitments submitted by the successful Contractor. All Offerors shall identify the following:

- The name of ALL subcontractors on the project;
- The names of all MBE, WBE and ESB firms. If firms have more than one certification (ESB and MBE) note that on the form; and
- The proposed scope or category of work for each subcontract
- If the Proposer will not be using any subcontractors, the Proposer will indicate "NONE" with the proposal.

5.2 .e Sustainability Practices

The Proposer shall briefly describe their sustainability practices. The proposal may include, but is not limited to the following issues:

- Company policies relating to sustainable practices.
- Energy efficiency accomplishments at your facilities.
- Use of renewable generated electricity. Describe the size and duration of purchases of Renewable Energy Certificates and size of solar installations at your facilities (specify Portland area PV installations, if applicable).
- Tele-work policies, transit, carpool, bicycling, or walking incentives, or other employee commuter options.
- Waste reduction, reuse, and recycling achievements.

5.2 .f Project Cost

Project Cost will be evaluated by the City using the City of Portland 20 year Net Present Value spreadsheet and a pro forma developed in the Energy Trust Valuation Model spreadsheet provided, for the 8 host sites (reference Exhibit F). Project Cost will be presented with any proposed incentive from Energy Trust. **Please note projects that receive Energy Trust Funding will be subject to repayment of a portion of the incentives if the solar electric system does not remain in operation for 20 years as provided for in the Energy Trust standard application Third Party Ownership Guide.** Proposers shall provide the spreadsheets in Excel spreadsheet form, submitted electronically on a disc clearly identified with RFP #109000

When calculating Net Present Value, (NPV), Proposers will respond to several price variables:

- a. Starting kWh price
- b. Fixed annual price escalator
- c. Annual kWh production for each group of sites
- d. Annual output degradation

When completing the pro forma (reference Exhibit F), Proposers will provide a single combined financial picture for all sites. Proposers will provide applicant information, capital costs, expenses, revenue, financing and depreciation. For Proposal evaluation purposes, proposal respondents will use the following constants when calculating 20-year NPV:

- a. One site, Columbia Boulevard Wastewater Treatment Plant; with an estimated system of 500 KW. Use 96% annual Total Solar Resource Fraction. Site served by PGE Schedule 89P.
- b. Four sites, including two Water Bureau wells; PGE Park stadium canopy, and Multnomah Arts Center; with a combined estimated system size of 389 KW. Use 96% Total Solar Resource Fraction for Well #8, 83% for Well #11, 92% for PGE, and 100% for Multnomah Arts Center. Sites served by PGE Schedule 83S.
- c. Three sites, including the NE Police Precinct, Dishman Community Center and the Kerby Building, with a combined estimated system size of 554 KW. Use 90% Estimated Total Solar Resource Fraction for these three sites. Sites served by PP & L Schedule 28.
- e. Discount rate of 7.75%

The above system sizes and annual solar access constants were estimates created by industry professionals to help the City identify and prioritize solar sites. The Contractor will not be bound by them; rather they are used only for proposal comparison purposes. The Contractor will be encouraged to work collaboratively with the City Host Bureau to determine the optimum size and design and to maximize energy production at each site.

Proposers should comment on the City's option to purchase the system and establishment of the system removal fund when providing their proposal response. Such comments will be included with the proposal.

Proposals that minimize the City's life cycle cost, and maximize kWh production will receive higher scores for this evaluation criterion than proposals that fail to demonstrate those results.

PROPOSAL NO. *

Proposers may also include within their proposals the annual license fee of \$10.00 per installed kW for the use of the site. This fee will be paid to the City Host Bureau (ref. Part I, Section A. 2).

As described in Part I, Section A.3, the PPA rate cannot be less than the at-market electricity rate if a project is to be eligible for Energy Trust incentives (reference Exhibit F, the Energy Trust At-Market Electricity Rate Calculation).

6. ATTACHMENT MATERIALS

Proposers may provide additional information that the Proposer feels is applicable to the evaluation of their Proposal response or provide their qualifications for accomplishing the project should be included as an Attachment to the proposal response. You may use this section to address those aspects of your services that distinguish your firm from other firms. These materials shall be considered as part of the page count of the proposal.

7. WITHDRAWAL, MODIFICATION OR ALTERATION OF PROPOSAL

Prior to the RFP opening, changes may be made provided the change is initialed by the Proposer or authorized agent. Also, a proposal may be withdrawn upon written request of the Proposer prior to the scheduled closing time for accepting proposals. Negligence on the part of the Proposer in preparing their proposal confers no right to withdraw their response after the scheduled closing time for filing proposals.

As a result of any of these actions, if the intent of the Proposer is not clearly identifiable, the interpretation most advantageous to the City will prevail.

PART III PROPOSAL EVALUATION

SECTION A PROPOSAL REVIEW AND SELECTION

1. Each proposal shall be evaluated on the criteria described under Part II Section B Proposal Organization 5.2.a to 5.2.f based on submittal information provided as summarized in the following table of evaluation criteria, weighting, and maximum points.

	Evaluation Criteria	Weighted Scoring
5.2.a Cover Letter	See Part II, Section B, 5.2.a.	No score
5.2.b Project Team and Qualifications	- List the Project Manager and all key personnel (including subcontractors) and management to be utilized for the work. Include a description of education, certificates or licenses, professional background, experience, skills, expertise, and training for the type of services required. - Provide names, addresses, contact information, and Contractor license numbers for all specified construction subcontractors. Provide signed letters from the subcontractors confirming their intent to participate in the project. - Provide samples of previous project products. - Describe the demonstrated experience of the firm and its principals in developing, specifying, and constructing solar electric energy systems, particularly commercial/industrial scale. Discuss experience from previous projects and how it relates to projects in this RFP. - Provide (3) references for projects of similar scope, size, and complexity that have been completed within the last 5 years. - Provide a statement describing the capability to complete all phases of the Project within the time schedule in Part I, Section B, 1.1 c. - Provide a detailed description of the ownership structure for the solar system. - Include a detailed statement demonstrating ability to fully finance the installations, including sources of equity or debt. Describe ability to acquire and lock in pricing for PV modules, inverters, and other system components for installation in CY 2009. - Include a detailed description of ability to fully utilize federal investment tax credit and depreciation incentives. Address whether the owners will use the Oregon BETC directly or utilize a BETC Pass-Through partner. If applicable, identify the Pass-through partner and their level of commitment to participate in this project.	25
5.2.c Approach to Project and Schedule	- Provide project background and support information that demonstrates company's commitment to professional design, high performance components and materials, and quality workmanship. - Address preliminary PV system design and sizing, cross section mounting standard detail, vegetative treatment at ground mounted sites, your plan for coordinating with the host bureau at the time of roof replacement, projected monthly KWh production data, projected annualized cost savings to the City, commissioning, system operation and maintenance plan, PV panel and component warranties, annual module degradation, proposed long term monitoring and report program associated with the hosted PV system, roofing penetrations, roofing contractor and warranty, roof racking, and accommodations for future re-roofing. - Confirm that all system installations will be performed by a recognized solar trade ally of Energy Trust. This is required in order to pass inspections.	25

PROPOSAL NO. *

	• Submit a work plan that outlines how tasks identified in their proposal will be prepared and completed as well as anticipated timelines for each task for this project. • Provide a detailed explanation of Proposers approach and the techniques they expect to use. Include any modifications of the work and scope presented in this RFP. • Describe how City personnel will be used, if at all, during the project and indicate the approximate time commitment. • Provide any additional information that would be beneficial to the selection committee. • Outline a work plan and related time schedule for each significant segment of the work. Delineate the project scheduling process your firm uses. • State whether the Proposer desires to offer commercial solar water heating system installation. •	
5.2.d Diversity in Employment	• Indicate if your firm is currently certified through the State of Oregon as an MBE, WBE, or ESB. If no, indicate the percentage of work to be subcontracted to M/W/ESBs. • Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm. • Describe your existing relationships with M/W/ESB firms including a description of your supplier diversity program. • Describe how your firm proposes to remedy the underutilization situation in the work place if it exists. • Discuss any project-specific opportunities for technical training and/or employment of underrepresented groups you would commit to. • Identify any other outreach opportunities that could be used on this project. What resources might be used to address such needs? • Provide a description of the company's experience in promoting participation by M/W/ESB enterprises as partners, consultants, or suppliers on previous projects. • Include a description of your firm's supplier diversity program (reference Part II, Section B, 5.2.d for additional detail required). • Discuss any innovative or particularly successful measures that your firm has undertaken to work with M/W/ESB firms on other projects. • Include a list of those certified M/W/ESB firms with which your firm has had a contractual relationship during the last twelve (12) months. • Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship with a certified M/W/ESB firm (reference Part II, Section B, 5.2.d for additional detail required). • If your firm is not utilizing existing relationships as described above, or is able to undertake additional outreach to improve opportunities for minority, women, and emerging small business, describe your outreach program or plan for obtaining maximum utilization of M/W/ESB firms on this project. • If your company will be utilizing M/W/ESBs on this project, please list those firms and detail their role within the present solicitation (reference Part II, Section B, 5.2.d for additional detail required).	15
5.2.e Sustainability	• Describe company policies relating to sustainable practices. • Describe energy efficiency accomplishments at your facilities. • Document use of renewable generated electricity. Describe the size and duration of purchases of renewable energy certificates and size of solar installations at your facilities. Specify Portland area PV installations if applicable. • Provide information about tele-work policies, transit, carpool, bicycling, or walking incentives, or other employee commuter options. • Describe waste reduction, reuse, and recycling achievements at	5

PROPOSAL NO. *

	your facility.	
5.2.f Project Cost	Complete Exhibit F—City of Portland 20 year Net Present Value and pro forma spreadsheets.	30
	TOTAL Score	100

2. PROPOSAL REVIEW

A selection review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals each of the Committee members will evaluate each proposal based upon the criteria listed above. In order to assist the evaluation committee, they may seek outside expertise, including but not limited to technical advisors. For any contracts over \$500,000, the Committee's recommendation will be submitted to the Portland City Council for approval. The City has the right to reject any or all proposals for good cause, in the public interest.

The Contractor shall be selected by the following process:

- a. A contractor evaluation committee will be appointed to evaluate submitted proposals.
- a. The committee will score the proposals according to the criteria, based on the information submitted.
- b. The committee will require a minimum of 20 working days to evaluate and score the proposals.
- c. A short list of Proposers may be selected for oral interviews if deemed necessary.
- d. If oral interviews are determined to be necessary, the initial scoring will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the interviews.
- e. If oral interviews are determined to be unnecessary, the preliminary scores shall become final. However, the City may convene the contractor evaluation committee to discuss the preliminary scores before they become final.
- f. Negotiations will follow with the selected contractor, and if successful, the contractor and City will enter into a services contract for the work. The City reserves the right to negotiate with one or more of the evaluated proposals through serial or simultaneous evaluations, whichever process it deems most advantageous for a positive outcome for the City.

3. CLARIFYING PROPOSAL DURING EVALUATION PERIOD

During the evaluation process, the City has the right to require any clarification or change it needs in order to understand the Proposer's view and approach to the project and scope of the work. Any changes to the proposal will be made before executing the contract and will become part of the final contract.

4. LOCAL CONTRACTING

The City shall prefer goods or services that have been manufactured or produced by a local business if price, fitness, availability and quality are otherwise equal; the City desires to employ local businesses in the purchase, lease, or sale of any personal property, public improvements or services; and residents of the State of Oregon and SW Washington benefit from optimizing local businesses and services, and the local employment opportunities they generate.

5. AWARD REVIEW AND PROTEST PROCEDURE

REVIEW: ORS 279B.060(5)(a) provides: "Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosure of contents to competing Offerors during, when applicable, the process of negotiation, but the contracting agency shall record and make available the identity of all Proposers as part of the contracting agency's public records from and after the opening of the proposals. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued."

REVIEW: Following the Notice of Intent to Award, the public may view proposal documents, but the City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act. Proposers shall designate information they consider exempt or conditionally exempt from disclosure by stamping the word "Confidential" on such documents or by otherwise indicating the documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah

County District Attorney determines that disclosure is required after appeal. The City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the Evaluation Committee, subject to the City's authority to withhold documents, as stated above.

PROTESTS: Proposers are permitted to challenge the City's decision to exclude the Offeror from the next step in the evaluation process and/or to award a contract. Depending on the nature of the protest, Proposers may wish to review Portland City Code (PCC) 5.33.720, 5.33.730, and 5.33.740 regarding protest procedures, all of which may be found online at the City Auditor's website.

The Bureau of Purchases shall post a Notice of Intent to Award to the successful Contractor. The Notice of Intent to Award shall be posted both on the Bureau's Internet Web Page and in the Bureau of Purchases office location at 1120 SW 5th Avenue, Room 750, Portland, Oregon 97204.

A Proposer who is adversely affected or aggrieved by the award of contract or evaluation decision shall have seven (7) days after the issuance of the "Notice" to file a protest. The contents to be included in the protest are found in PCC 5.33.740. A protest is not valid if the Proposer would not be eligible to be awarded a contract if its protest were upheld. The Purchasing Agent will review any protest and issue a written decision. Whether there are further appeal processes depends on the discretion of the Purchasing Agent.

SECTION B CONTRACT AWARD

1. CONTRACTOR SELECTION

The City will award a contract to the Contractor whose proposal is considered and evaluated as being the most advantageous to the City. The contractor selection process will be carried out under Portland City Code, Chapter 5.33.

2. CONTRACT DEVELOPMENT

The proposal and all responses provided by the Contractor may become a part of the final contract. The form of contract shall be as previously stated herein.

3. NOTICE OF INTENT TO AWARD

A notice of intent to award posted on the Bureau of Purchases website does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing any equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order or contract.

4. ASSIGNMENT OF ANTI-TRUST RIGHTS

By entering into a contract, the Contractor, for consideration paid to the Contractor under the contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action, which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of

PROPOSAL NO. *

Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- b. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- b. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the city of Portland its proportionate share thereof, if any, assigned to the State hereunder.

5. FAILURE TO EXECUTE CONTRACT

Failure on the part of the Offeror to whom a contract is awarded to execute the contract and deliver the contract and all required documents with the required bonding and insurance certificates within twenty (20) calendar days shall be just cause for cancellation of the award and withdrawal of the contract. Award may then be made to another Proposer, or the work may be re-advertised or otherwise as the City may decide.

EXHIBIT A SAMPLE SOLAR MASTER CITY AGREEMENT

for

SOLAR ELECTRIC PHOTOVOLTAIC SYSTEMS

This Agreement, made and entered into this _____ day of _____, 2009, by and between XXXXX a XXXXX Corporation ("Contractor"), and the City of Portland ("City") governs transactions by which the City will _____. Collectively Contractor and City shall be known as the "parties" and each may be referenced individually as a "party." This Master Agreement, Attachments and any resulting Solar Facility Licensing Sub-Agreement(s) and Exhibits are the complete Agreement regarding these transactions, and replace any prior oral or written communications between both parties.

THE PARTIES AGREE AS FOLLOWS:

1. AGREEMENT STRUCTURE: This Master Solar Agreement sets forth the general terms and conditions of the relationship. Each City Hose Bureau and corresponding project site will have their respective Solar Facility Licensing Sub-Agreement which will be executed to accomplish the individual project(s). All Solar Licensing Sub-Agreements shall be in accordance with these Master Solar Terms and Conditions. The Contractor shall be expected to work closely with designated City of Portland bureau personnel in order to accomplish the goals and perform the tasks as identified within the Solar Facility Licensing Sub-Agreement. If there is a conflict among the terms in the various documents, those of this Master Agreement shall prevail over those of the Licensing Agreement.

2. GENERAL SCOPE OF WORK: The Contractor shall develop the concept, interim and final design/engineering specifications, financing, and provide for the construction, materials, installation, operation, and maintenance of a turn-key, hosted solar photovoltaic system (PV) at numerous City sites over the course of this Agreement. The Contractor will sell the solar generated electricity to the City bureau hosting the system. This Agreement shall not be considered an exclusive agreement on the part of the City; the City reserves the right to contract with other third-party solar photovoltaic (PV) developers during the term of this Agreement. No City funding will be contributed toward the system cost.

3. CITY OF PORTLAND'S GOALS AND OBJECTIVES: The City desires to support the renewable energy goals proposed in *The Local Action Plan on Global Warming*, and to enhance the value of City facilities by engaging in this Agreement that will make it possible for solar electricity to be generated at City facilities (project sites). As a way to accomplish this goal, the City is engaging in this Agreement with XXXXX [Contractor's name], a third party owner to design, build, own, operate, maintain PV system on City property and sell solar generated electricity to the City Host Bureau. Specific objectives the City would like to attain while pursuing this goal include the following.

- a. As Sub-Agreements to this Agreement are executed, install solar electric photovoltaic systems, (PV), on roofs and other City-owned space and maximize renewable energy production.
- b. Contract with a qualified PV system owner with demonstrated experience in high quality system design, installation, ownership, operation and maintenance.
- c. Contract with a solar system owner who is able to leverage state and federal tax incentives and if applicable, the financial resources offered by the Energy Trust.
- d. Purchase electricity at a price near that of our present utility rates.
- e. Purchase electricity with a predictable annual price escalator,
- f. Add long-term economic value to City facilities by employing thoughtful designs and materials that are of investment grade quality and the option for ownership by City Bureaus.
- g. Receive an annual license fee for the use of its site.
- h. Support the growth of clean energy businesses in the Portland metropolitan region.
- i. Include solar and renewable energy educational elements where practical. Consider public interpretive kiosks, displays, signage and or web-based resources.
- j. Periodically review new City solar electric photovoltaic sites for subsequent phases of this project.

PROPOSAL NO. *

When proposing a project to the City Host Bureau, the Contractor will identify which of the City's Goals and Objectives will be accomplished by the project.

Energy Trust of Oregon Participation: Energy Trust is an independent nonprofit organization dedicated to energy efficiency and renewable energy development. Energy Trust has provided funding for at least 900 solar electric projects in Oregon to date. Funded by a public purpose charge paid by the Oregon customers of Portland General Electric Co., PacifiCorp, Northwest Natural and Cascade Natural Gas, Energy Trust provides cash incentives that reduce the above-market costs of renewable energy projects.

Projects developed by the selected bidder under this RFP will be eligible for the Energy Trust's solar electric incentive offer in the year an incentive application is submitted to the Energy Trust, subject to all rules and limitations of the offer. If and when projects are ready to apply for Energy Trust incentives, separate applications for each site should be made using the Energy Trust's current incentive agreement at the time of application.

By law, Energy Trust incentives can only be used to fund above market costs. The City requires that Proposers shall submit a pro forma as described in Part II Section B 5.2f. For the selected bidder that submits applications for Energy Trust incentives, the Energy Trust may also review the pro forma to determine the above market cost for a project and eligibility for the standard incentive. Also, Energy Trust incentives cannot be used to support a PPA rate (electricity charge per kWh) and escalation below the current at-market electricity rate. To be eligible for Energy Trust incentives, the final PPA offer accepted by the City at the time that the contract between the City and the successful bidder is signed, may not be less than the adjusted at-market electricity rate as compared on a Net Present Value basis. See Energy Trust At-Market Electricity Rate Calculation in Part I Section C Exhibit F for information on how Energy Trust determines the at-market electricity rate. For determination of any final eligibility for Energy Trust incentives, the at-market electricity rate will be recalculated if there is any update to the utility price summaries posted on the utilities' websites between the time the RFP bidder is selected and the City and the System Owner complete their master agreement.

To be eligible for Energy Trust funding, all program and system technical requirements must be met. For information on Energy Trust solar incentives, forms and incentive agreements, procedures, technical requirements, how to qualify as an Energy Trust solar trade ally, and inspection standards, refer to www.energytrust.org/TA/solar/index.html.

4. REQUIRED SERVICES

4.1 Design, Engineering, Permitting and Incentives: The Contractor shall design and engineer solar PV systems for robust electricity production, taking into consideration the objectives of the City Host Bureau, proposed installation site, available solar resource, installation costs, aesthetics, structural limitations, roof condition and other relevant factors. For the project site under consideration for this Sub-Agreement, the Contractor shall complete and submit design documents, "Site Review Package" to the appropriate entity. Those documents must include the following information *[include or add requirements pertinent to the project]*:

- a. System description.
- b. Equipment details and descriptions.
- c. Plans with the PV system layout, including racking, module placement, conduit raceways, conduit sizes, module spacing, etc.
- d. For ground mounted systems, a vegetation and maintenance plan for the ground beneath and surrounding the system modules and support structures.
- e. Single line diagrams indicating system layout and all required connections to the utility, specifying the inverter models and ratings.
- f. Length of warranty for major components compared to the industry average.
- g. The Contractors written specifications for procuring and installing the equipment.
- h. Professional Engineer verification that the system will meet wind-load, seismic, and structural requirements.
- i. Mounting details and appropriate certification. **Note:** Portland's Bureau of Development Services has been reluctant to approve building permits for ballasted mounting systems. Proposals for ballasted mounting will be considered on a case by case basis.
- j. For mounted systems, address what accommodations the PV owner will make when the City desires to replace the existing roofing material.
- l. Electrical grid interconnection and approved Net Metering Agreement with the local utility.
- m. Controls, monitors and instrumentation.
- n. Web-based monitoring.
- o. Educational displays or features.

PROPOSAL NO. *

- p. Site Safety Plan
- q. Erosion Control Plan

Site Review Package shall be submitted in a format suitable for the individual City Host Bureau, determined at the time the City Host Bureau is engaged in discussions for the site to be developed. The Site Review Package shall be submitted to the City Host Bureau prior to submission to the Bureau of Development Services. As the Contractor works with the Bureau of Development Services to obtain necessary permits, changes to the Site Review Package may be requested of the Contractor. In order to ensure that the changes are satisfactory to each City Host Bureau, these proposed changes must be reviewed and approved by the appropriate City Host Bureau. The Contractor shall be responsible to ensure that the review process occurs. Prior to construction at a particular site, the City Host Bureau will issue a Site Access Release signed by the appropriate City Host Bureau project manager.

The Contractor shall identify an appropriate location for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:

- a. Compatibility with existing facilities and uses
- b. Ease of maintenance and monitoring
- c. Efficient operation
- d. Low operating losses
- e. Secured location and hardware

The Contractor shall secure from the Bureau of Development Services (BDS) and appropriate utility company all required rights, permits, approvals and interconnection agreements at no additional cost to the City including but not limited to a Net Metering Agreement. The City will become the signatory only where required by law. The Contractor shall discuss particular site details with the appropriate Host City Bureau.

The Contractor shall complete and submit in a timely manner all pre-applications, post applications and other documentation required to qualify each installation for available rebates and tax credits.

4.2 PV Module, Inverter and Other Plant Component Specifications: The Contractor shall install PV panels, inverters and other components to meet the most current version of the *Solar Electric System Requirements* of the Energy Trust of Oregon, available at:

<http://www.energytrust.org/TA/solar/index.html>

In addition to Energy Trust specifications, Power Modules shall be warranted for at least 20 years with a minimum 80% performance at t20 years. Modules shall be rated/proposed at *minimum* power level and not a +/- tolerance figure. Individual modules exceeding 175 W are preferred.

[optional: Roof rack systems that are hinged or otherwise easily accommodate future re-roofing are strongly encouraged at roof sites.]

4.3 Installation: The Contractor shall supply all equipment, materials and labor as necessary to install the solar PV system and integrate them with other power sources. Access to the site must be pre-approved by the City Host Bureau and coordinated through the facility site manager or their designee. .

This project is for a public work and is subject to ORS 279C.800 to 279C.870, the Oregon Prevailing Wage Rate (PWR) Law. It is the City's expectation that the installer will meet Prevailing Wage Requirements as if the project were installed by the City of Portland. Pursuant to OAR 839-025-0020(3) and (4), the existing prevailing wage rates applicable to this project are incorporated within these specifications by reference.

General information about PWR as well as the current and past prevailing wage rates may be found at:

http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml

PWR forms may be found at: http://www.boli.state.or.us/BOLI/WHDPWR/W_PWR_Forms.shtml

4.4 Electrical Interconnection: The Contractor shall supply and install all equipment required to interconnect the solar PV systems to the City facility and the distribution utility system. The Contractor shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Contractor.

After the Net Metering application has been submitted, if the electric utility determines that the PV system will trigger new distribution system upgrades and significant expense, the Contractor is not obligated to install the PV system.

However, the Contractor and City Bureau representatives will consider these unexpected costs and determine if there is mutual benefit in reconsidering or modifying the project.

4.5 Commissioning and Acceptance Test for Initiating the Power Sales Agreement: During the start-up, the City, and or its independent representative, shall observe and verify each system's performance. Each City Host Bureau is encouraged to have a representative present at this test. Valuable information shall be provided that will be needed if and when emergency/shut off conditions occur during the contract period. All testing shall be at the Contractor's expense. City shall have the right to observe testing and confirm testing at its cost if it is deemed necessary. Required commissioning and acceptance test services include:

- Starting up the solar PV system until it achieves the performance requirements of the power sales agreement.
- Conducting the performance testing over a consecutive 24-hour period.
- Conducting the successful delivery of power within 30 days following the completion of the system.

4.6 Operation, Maintenance, and Roofing: The Contractor will be responsible for the operation and maintenance of the solar facility in a manner consistent with prudent operating practices. The Contractor is solely responsible for performing all maintenance and repairs necessary to keep the entire system in good operating condition and shall be responsible for wind-load, seismic, structural inspections. The Contractor will take all reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the system and will comply with all applicable laws, rules, regulations and permitting requirements. Contractor shall be advised that each City Host Bureau may have specific laws, rules, regulations, and permit requirements that apply to it only, and the Contractor shall familiarize themselves with these and what needs to be done to adhere to them (e.g., Water Bureau's Well Head Protection Program). The Contractor will be required to perform wind-load, seismic, and structural and roof inspections, related to the solar photovoltaic systems, in each of the first three years of operation and if no problems are discovered, then on every third year thereafter. These inspections must be completed by a licensed Professional Engineer in the appropriate area of expertise. Documentation of these inspection results must be transmitted to the Host City Bureau by June 30 of each year and otherwise shall be on file with the Contractor and available for review at anytime.

Roofing penetrations shall be performed by qualified roofers and shall be warranted by the roofing company for a minimum of twenty years. Recognizing that the PV system will likely outlast composition and membrane roof systems, the Contractor shall use hinge-rack systems or other rack designs that accommodate re-roofing with minimal disturbance to the PV system and minimal added cost due to the presence of the solar system.

4.7 Manuals and Drawings: The Contractor shall provide three (3) sets of site-specific operation, maintenance and equipment and parts manuals for each installed solar PV system. The manuals shall cover all components, options and accessories supplied. They shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment at the site. The Contractor shall also provide three (3) sets of as-built drawings in the appropriate format, hard copy and electronic, as specified by the City Host Bureau for the project site. These products shall be delivered prior to acceptance of the system. The Contractor owns, operates, and maintains all systems.

4.8 City's Purchase Option: At the end of the Contract term, or a mutually agreed upon date, the City shall have the option to purchase the solar electric photovoltaic system at fair market value. The parties will attempt to agree on a fair market price for the system by themselves, but if they are unsuccessful, the fair market value will be determined by a mutually agreed upon independent energy appraiser or mutually agreed upon expert in the field.

4.9 System Removal Fund: Should the City choose not to purchase the solar electric photovoltaic system, the Contractor will be required to remove the solar electric photovoltaic system by the expiration date of the Contract. This task shall be completed in accordance with all applicable laws and the site shall be returned to its original condition, with the exception of attached system mounting pads or other attachments affixed to the roof, less nominal wear, at no cost to the City. In order to accomplish this task, the Contractor will be required to establish a System Removal Fund equal to \$250.00 per installed kW. The Contractor shall make this fund available either through the purchase of a bond or establishment of a line of credit to cover the removal costs. Verification of the bond or establishment of a line of credit shall be provided to the City Host Bureau at the time the Contractor and the City are performing commissioning and acceptance testing according to 4.5 Commissioning and Acceptance Test for Initiating the Power Sales Agreement. The verification must be in a form acceptable to the City Attorney. Regardless of the size of the System Removal Fund, sufficient funds shall be budgeted and available at the end of the agreement to cover all expenses for removal of equipment from the City site. The System Removal Fund shall be set up in a fashion that makes funds available to the City even if the contractor defaults or goes bankrupt.

PROPOSAL NO. *

Any funds remaining in the System Removal Fund after the Contractor's work has been completed, and is acceptable to the City, shall be returned.

If the City chooses to purchase the solar electric photovoltaic system (i.e. exercise its buy-out option), the parties mutually agree that the System Removal Fund of \$250.00 per kW will be applied to the City's purchase payment.

4.10 Public Education and Monitoring: Public education and on-line monitoring of the system performance are important elements of the City's renewable energy goals. The Contractor shall provide a turn-key data acquisition and display system that allows the City and public to monitor and display historical and live electricity generation for each site. The system should allow the City to track cumulative power generated. The regularly collected data should reflect, but not be limited to the following:

- a. System performance showing instantaneous output in kW, daily, year-to-date output in kWh
- b. Display of accumulated output in a user friendly format
- c. System availability and weather related data (ex: ambient temperatures, irradiation, wind speed)
- d. Capacity factor
- e. Degradation

The data system shall be designed for turn-key, remote operation. Data shall be transmitted via internet or telephone from the site to a server. Data storage, management and display will be the responsibility of the Contractor. The data system must not require that a dedicated or always-on personal computer be located at each site.

The Contractor and the City Host Bureau will work together to create their plan for public education and promotion of solar and renewable energy. The Contractor is encouraged to employ kiosks, interpretive signs, and or displays of non-working PV modules that visitors can examine up close based on the City Host Bureau approval.

5. EFFECTIVE TERM AND DURATION: The term of this Master Agreement shall begin on ~~XXXXXX, 2009~~ and shall expire on ~~XXXXXX, 2014~~ unless terminated sooner as provided herein.

5.1 Term: The term of the Agreement shall begin on the above noted date and terminate as indicate above, subject to extension as provided in Section 5.2 below, or as provided herein.

5.2 Extensions: So long as Contractor is not in default at the time of renewal, Contractor shall have the option to extend the term of this Agreement for two (2) additional five (5) year periods on the same terms and conditions in effect upon the commencement of the term. The Contractor shall give the City at least one hundred eighty days (180) days prior to the expiration of the initial term of this Agreement, the parties may by mutually written Amendment, agree to extend this Agreement by another five (5) years. However, nothing binds or requires either party to extend this Agreement.

6. CONSIDERATION: The City agrees to pay Contractor an agreed upon sum to sell the solar generated electricity to the Host City Bureau. The fees to be paid by City for the purchase of solar generated electricity shall be as agreed to and stated within the corresponding Sub-Agreement.

7. DEFINITIONS: While other definitions may exist in the Solar Energy development community for these terms, for purposes of this Agreement, the following definitions shall apply:

Annual License Fee – fee intended for the use of the project site or premises.

Approvals - all certificates, permits, licenses and other regulatory approvals required by all appropriate authorities under all applicable Laws related to the construction, operation, maintenance and repair of the Solar Facility.

Business Day - any day except a Saturday, Sunday, or a federal or state holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

City - City of Portland, a municipal corporation, by and through its City Host Bureau.

City Host Bureau – individual City bureaus or agencies who have developed a plan and agree to host a solar generated electricity project.

PROPOSAL NO. *

Commercial Operation Date or COD - will be the third (3rd) day following the Contractor's delivery of notice to the City that the Solar Facility is ready for commercial operation.

Contractor – a company or team of companies who have been hired to develop the concept, interim, and final design/engineering specifications, financing, construction, provides materials, installation, operation, and maintenance of a turn-key hosted solar photovoltaic system (PV) at numerous City project sites over the course of a multi-year City Master Solar Agreement.

Energy - electrical energy, measured in kilowatt-hours ("kWh") that is produced by the Solar Facility.

Energy Price – price of the solar generated electricity sold by the Contractor to the City Host Bureau hosting

Environmental Attributes - any and all environmental, power source, and emission characteristics, credits, reductions, offsets, allowances, and benefits, including Green Tags and RECs, howsoever entitled, directly or indirectly attributable to the generation of electricity from the Solar Facility. Environmental Attributes include but are not limited to (1) any benefit accruing from the renewable nature of solar PV-generated energy; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO_x), nitrogen oxides (NO_x), and carbon monoxide (CO)); (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases ("GHGs") that may contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (4) any property rights that may exist with respect to the foregoing attributes, howsoever entitled, (5) displacements of energy generation by fossil-fuel-consuming or GHG-emitting generation resources; and (6) any reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Environmental Incentives - include, but are not limited to, (1) federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Facility; (2) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facility that are applicable to a local, state, or federal income taxation obligation; and (3) grants or subsidies for which the Solar Facility may be eligible. Environmental Incentives do not include Environmental Attributes or Green Tag Reporting Rights.

Environmental Laws - all Laws now or hereafter in effect, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or ground water.

Force Majeure" means any act or event that delays or prevents a Party from timely performing obligations other than the payment of money under this Agreement, or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and are beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, Force Majeure may include without limitation: an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

Green Tag - a commercially recognized unit representing the value or amounts of Environmental Attributes.

Green Tag Reporting Rights - the right of a green tag City to report the ownership of accumulated green tags in compliance with federal or state law, if applicable, to a federal or state agency or any other party at the green tag City's discretion. Such rights include without limitation those green tag reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

Governmental Authorities - the United States of America, the State, and any political subdivision thereof and any agency, department, commission, board, court or instrumentality thereof.

PROPOSAL NO. *

Hazardous Material - any substance or constituent or pollutant or contaminant that has been determined, to be hazardous, toxic or dangerous to human health or the environment under any Law as of the Effective Date, including but not limited to any hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C.A. § 9601 et. seq.), any solid waste under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. § 6901 et. seq.), or any contaminant, pollutant, waste or toxic substance under the Clean Air Act, as amended (42 U.S.C.A. § 7401 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C.A. § 1251 et. seq.), the Safe Drinking Water Act, as amended (42 U.S.C.A. § 300f et. seq.), the Emergency Planning and Community Right-To-Know Act, as amended (42 U.S.C.A. § 110001 et. seq.), the Occupational Safety and Health Act, as amended (29 U.S.C.A. sec. 651 et. seq.), the Hazardous Materials Transportation Act, as amended, (49 U.S.C.A. § 5101 et. seq.), and the Toxic Substances Control Act, as amended (15 U.S.C.A. § 2601 et. seq.).

Host Site – location as provided by the City and agreed to by the City's Host Bureau.

Law - any applicable law, statute, regulation, rule, regulation, decision, writ, order, decree or judgment, or any interpretation thereof, promulgated or issued by Federal, State, municipal, local and administrative authorities.

Lien - any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, encumbrance or claim of any nature.

Premises – is the actual location of the solar photovoltaic system as provided by the City Host Bureau as described in Attachment A of the Solar Licensing Sub-Agreement.

Preexisting Hazardous Materials - Hazardous Materials or Substances that existed in, on, under or about the Premises or other property of City prior to the effective date of this Agreement, whether such substances were within the definition of Hazardous Substances as used in this Agreement as of the effective date or subsequently become included within such definition.

Project site – those locations identified by the City bureaus and/or governmental agencies to be candidates for a solar generated electricity project.

Prudent Operating Practice - the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

Qualified Assignee - any person or entity that has competent experience in the operation and maintenance of solar photovoltaic systems, is financially capable of performing Contractor's obligations under this Agreement, and agrees in writing to assume Contractor's duties and obligations under this Agreement.

Removal Bond - a bond or other instrument acceptable to City to be used for the payment of costs associated with the removal of the Solar Facility and restoration of the Premises.

Renewable Energy Certificate (REC) - represents the Environmental Attributes associated with one (1) MWh produced by the Solar Facility. Renewable Energy Certificates are accumulated and reported on a MWh basis.

Replacement Energy Cost - the difference, if any, between (1) the cost of City's purchases of substitute energy at normal tariff rates from the Utility, minus (2) the cost City would otherwise then have paid for an equivalent amount of Energy under this Agreement.

Solar Facility - the solar electric, photovoltaic system, associated hardware and equipment and solar thermal components will be as proposed by the Contractor to be installed on/at the City Host Bureau site.

State – the State of Oregon.

Term – is the duration of the contract and all its possible extensions and amendments.

8. INSURANCE – PROOF OF COVERAGE: Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Purchasing Agent or the Auditor. Proof of insurance shall be required during the entire length of the contract.

Insurance - Public Liability and Property Damage

The Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Contractor's work under this contract

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation

Prior to the performance of any work under a contract awarded by the City, the Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

Certificate of Insurance

As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by City is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

City reserves the right to suspend the Agreement in the event of non-compliance with the insurance requirements of this section. In no event shall any suspension entitle Contractor to an automatic renewal of the Term.

General liability limits may be increased, at the discretion of the City's Risk Manager, relative to risk involved. Upon such increase in liability limits, Contractor shall have the discretion to adjust the price of power, to recover its actual costs.

9. INDEPENDENT CONTRACTOR STATUS: The Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the city including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

10. OWNERSHIP OF PROPERTY: The Contractor is the sole legal and beneficial owner and the operator of the Solar Facility. The Solar Facility shall remain the personal property of the Contractor for the duration of this Master Agreement and shall not attach to or be deemed a part of, or fixture to, the Premises. The Solar Facility shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code as in effect in the State.

11. NO THIRD PARTY BENEFICIARIES: Contractor and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

12. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

13. SURVIVAL: The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

14. COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all applicable federal, state and local laws and regulations, including statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon. Contractor, at its own cost and expense, shall comply with all Environmental Laws (reference Section 7, DEFINITIONS) that affect (1) Contractor's construction, installation, reconstruction, maintenance, repair, operation or removal of the Solar Facility installed on the Premises covered by this Agreement and (2) Contractor's use and possession of the Premises. Contractor shall be solely responsible for obtaining all required Approvals before commencing any construction, installation, reconstruction, maintenance, repair, operation or removal work at the Premises and for making all necessary submissions to appropriate environmental regulatory agencies. Contractor shall bear the cost and expense of all necessary applications and Approvals. If City deems it appropriate and consistent with the public interest, Buyer, at Contractor's sole cost and expense, shall cooperate with Contractor in obtaining required Approvals and in making submissions to appropriate environmental regulatory agencies.

This Master Solar Agreement is not intended to create a separate obligation on the part of Contractor in favor of City to remediate Preexisting Hazardous Materials (reference Section 7, DEFINITIONS), nor does it limit or expand the rights or defenses of City or Contractor with respect to such Preexisting Hazardous Materials. In no event shall Contractor be responsible for the cleanup or remediation of any Preexisting Hazardous Materials on the Premises unless (1) Contractor's negligence or willful misconduct causes an exacerbation or migration of such Preexisting Hazardous Materials, or (2) Contractor causes additional damage to the Premises in question beyond any damage caused by the presence of such Preexisting Hazardous Materials due to Contractor's violation of any applicable Environmental Laws regarding such Preexisting Hazardous Materials. This Section shall not relieve Contractor of any obligation it might have with regard to third parties or any governmental entity by operation of Law, including but not limited to, applicable Environmental Laws. Prior to commencement of Construction, City must give notice to Contractor of any Pre-existing Hazardous Materials known by City to be located at or near the Premises.

The Contractor also shall be in compliance with the laws regarding conducting business in the City of Portland before an award may be made. The Contractor shall be responsible for the following:

Certification as an EEO Affirmative Action Employer: The Contractor is EEO certified through XXXXXX. For insurance certificates expiring during the term of the contract, the Contractor will retain them in current status for the duration of this Agreement.

Non-Discrimination in Employee Benefits (Equal Benefits): The Contractor has complied by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: Option XXXXXX (insert option selected)

Business License: The Contractor has a current City of Portland Business License, #XXXXXX and shall be current through the duration of this Agreement.

15. GOVERNING LAW / VENUE: The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Agreement the Contractor agrees to in personam jurisdiction of the Oregon courts.

16. NONDISCRIMINATION: Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With

PROPOSAL NO. *

Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

17. INDEMNITY: Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Contract.

18. ASSIGNMENT OF ANTI-TRUST RIGHTS: By entering into a contract, the Contractor, for consideration paid to the Contractor under the Agreement, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this Agreement.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Agreement, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- b. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- c. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

19. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Agreement, or any provision of this Agreement, is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of services.

21. ASSIGNMENT AND SUBCONTRACTING: This Agreement or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the Agreement. The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Contract,

PROPOSAL NO. *

the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

22. LIENS: Contractor shall not permit any claim to be filed or prosecuted against the City or permit any lien to be asserted against the solar facility and agrees to assume responsibility should such lien or claim be filed, including the payment of costs and expenses involved in removing the lien. Similarly, the City will not directly or indirectly allow any Lien on or with respect to the Solar Facility.

a. If any lien is filed against the Solar Facility, the party who acts or omissions were responsible for creating the lien will give immediate notice of the lien to the other party and promptly take such action as is reasonably necessary or appropriate to have the Lien discharged and removed. Contractor or City, as the case may be, shall use commercially reasonable efforts to obtain a disclaimer or release from the Lienholder. Neither party is responsible to discharge or remove any Lien that is not the result of that party's acts or omissions

b Each party will reimburse the other party for reasonable costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing such Lien to the extent that such costs and expenses are the result of the action of the other party .

c. If City is fee owner of the Site, City consents to the filing of a disclaimer of the Solar Facility as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction of the Site. If City is not the fee owner, City will use commercially reasonable efforts to obtain such consent from such owner.

d. The City will use reasonable commercial efforts to give effective notice of the Contractor's ownership of the Solar Facility and the Solar Facility's status as personal property to all parties having an interest in or Lien upon the real property and fixtures which are part of the Site.

23. ENVIRONMENTALLY PREFERABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Proposers are encouraged to incorporate these Principles into their scope of work with the City wherever possible. There fore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractors are encouraged to incorporate environmentally preferable products or services into their work and products wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

24. FORCE MAJEURE: Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the party's reasonable control such as acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party will be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed; provided, however, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty.

Force Majeure Notice: In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party who is unable to perform as a result of a Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice prejudices the other Party.

25. SUB-AGREEMENTS: All changes to this Master Agreement, including changes to the scope of work and Agreement amount, must be made by written Solar Facility Licensing Sub-Agreement and approved by the Purchasing Agent to be valid. The City's Purchasing Agent is authorized to execute Sub-Agreements to this Contract without the City's further approval, provided such Sub-Agreements are in writing, signed by both parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into Sub-Agreements, except as may be specifically granted by the City Council to the Purchasing Agent, or to waive the approval of the City Attorney's office.

26. NON-WAIVER: No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

27. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES: The Contractor shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the goods and services. This includes planning for and integration of the goods and services provided under this Agreement with those provided by others. Further, Contractor shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the goods and services. Contractor's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

28. ACCESS TO RECORDS: The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

a. Meter Verification.

The Contractor will verify that the electric meter is accurate on an annual basis or earlier if the Contractor or City has reason to believe there may be a meter malfunction. Contractor will test the meter at its expense and provide copies of such tests to the City. The tests shall be conducted by independent third-parties qualified to conduct such tests. The City shall be notified seven (7) days in advance of such tests and have a right to be present during such tests.

b. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than two percent (2%) and the date of malfunction is known, that date will be used to adjust prior invoices back to the time of the malfunction. If the date of malfunction is unknown, the invoices issued since the last meter test shall be adjusted based on the assumption that the meter was inaccurate for one-half of the period of time since the last meter test.

29. AUDITS: The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this contract shall be retained by the Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

30. EMPLOYEES NOT TO BENEFIT: City employees are required to follow state and local ethics rules. In addition, no City employee or elected official of the City shall receive any financial benefits from Contract. .

31. CITY FURNISHED PROPERTY: Project site locations and/or facilities will be furnished by the City as provided for within any resulting Solar Facility Licensing Sub-Agreement.

a. **Maintenance of the Solar Facility:** The Contractor shall be responsible for the operation and maintenance of the Solar Facility in a manner consistent with Prudent Operating Practices. If the supply of Energy from the Solar Facility is interrupted as a result of malfunction or other shutdown, Contractor shall use commercially reasonable efforts to remedy the interruption. Contractor shall comply with all Laws relating to the operation of the Solar Facility and the generation and sale of Energy, including obtaining and maintaining in effect all Approvals.

b. **Installation and Maintenance of the Utility Interconnection:** The Contractor shall comply at Contractor's sole cost with all applicable operational standards and requirements imposed by the Utility, including interconnection requirements, as stated in the Interconnection Agreement in Exhibit D, if any.

c. **Maintenance of Health and Safety:** The Contractor will take all reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Solar Facility and will comply with all applicable health and safety laws, rules, regulations and permit requirements. If Contractor becomes aware of any circumstances relating to the Premises or the Solar Facility which creates an imminent risk of damage or injury to any Person or any Person's property, Contractor shall take prompt action to prevent such damage or injury and will contact the City's emergency contact identified in the Solar Licensing Sub-Agreement by telephone. Such action may include disconnecting and removing all or a portion of the Solar Facility, or suspending the supply of Energy to the City. If the Solar Facility is to be removed, the Contractor will comply with the same conditions and requirements which apply to a removal of the Solar Facility at the expiration of the Term, as detailed in Section 48.f, Removal of Solar Facility and Restoration of Premises at Expiration, Early Termination or Event of Default. . If the cause of the threat relates to the Solar Facility itself, such remedial action will be at Contractor's sole cost and expense.

d. **Payment of Taxes and Assessments:** The Contractor is solely responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees relating to the Contractor's ownership of the Solar Facility.

32. CITY'S RIGHTS, DUTIES AND OBLIGATIONS

The City agrees to purchase all Energy produced by the Solar Facility at the Energy Price specified by the Sub-Agreement. The City shall provide or assist Contractor in obtaining convenient, reasonable access to and from the Solar Facility during normal business hours necessary or appropriate for Contractor to perform construction, inspections, maintenance, repairs and the replacement of damaged portions of the Solar Facility. Access includes, but is not limited to, access for lifting, rigging and material handling equipment required by the Contractor.

33. ACCESS AND WORK AT PROJECT SITE:

a. **Assistance with Interconnection, Permits and Licenses:** At the Contractor's sole cost, the City will use commercially reasonable efforts to assist the Contractor and cooperate with the Contractor, as necessary, to acquire and maintain Approvals, including providing any building owner or occupant authorizations, and signing any applications for permits, local utility grid interconnection applications and rebate applications as are required to be signed by a person in the position of the City. The City will also deliver to the Contractor copies of any necessary Approvals, rebates or other financial incentives, which are in the name or physical control of the City.

b. **Protect Solar Access:** The City shall not take actions, or allow others to conduct activities at the Site, that cause shading of the Solar Facility to an extent that impairs or reduces the Energy output of the Solar Facility on a monthly basis by more than one percent (1%). Parties agree that if the City's actions result in shading of the Solar Facility such that the Solar Facility produces less than 80 percent of the Solar Facility's expected performance output, the Parties will make every effort to eliminate the shading problem or relocate the Solar Facility to a mutually agreeable location.

c. **Maintenance of Premises, Utility Connection and Service Contracts:** The City will use commercially reasonable efforts to maintain the City's property and City's equipment in good condition and repair so as to be able to receive and utilize the Energy generated by the Solar Facility. The City will maintain its connection and service contract(s) with the Utility, or any successors thereto, so that the City can, upon any suspension or interruption of delivery of Energy from the Solar Facility, provide the Project Site with its full requirements for electricity.

d. The individual City Host Bureaus may impose specific access controls to the Contractor for use of their property. These controls may include, but not be limited to: pre-approval forms for Contractor access, inclusion of additional locks to gain access, notification of Bureau Security Officers, etc. Additional details may be found in Exhibit B.

34. NOTICE: Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

CONTRACTOR:	CITY:
	City of Portland
XXXXXX	XXXXXX
XXXXXX	Bureau of Purchases
XXXXXX	XXXXXX
	XXXXXX
Attn:	XXXXXX

For any executed Solar Licensing Sub-Agreement(s), if any notice is required, it shall also be given to the party or parties identified within the executed Solar Licensing Sub-Agreement. If either party changes its address or if a party's representative changes, the other party shall be advised of such a change in writing, in accordance with this section.

35. FACSIMILE DELIVERY: The Solar Master City Agreement and any Solar Facility Licensing Sub-Agreement(s) may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Sub-Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

36. ENVIRONMENTAL ATTRIBUTES AND ENVIRONMENTAL INCENTIVES

The City acknowledges that any Environmental Attributes, Environmental Incentives and other items of whatever nature relating to Environmental Attributes and Environmental Incentives related to the Solar Facility belong to the Contractor, and it is understood that Contractor will assign such Environmental Attributes to the Energy Trust of Oregon. Any Environmental Attributes or Environmental Incentive that is initially credited or paid to the City will be assigned by the City to the Contractor without delay. At the Contractor's expense, the City agrees to cooperate with Contractor in any applications for Environmental Attributes or Environmental Incentives; provided, however, that the City is not required to disclose proprietary information in connection with completing such applications. Except for any Environmental Attributes or Environmental Incentives directly related to the Solar Facility, City retains all rights related to the LEED status of the building on which the Solar Facility is located.

a. **Contractor to Pay Taxes and Charges:** If City, either directly or as a levy against the Site, is assessed any taxes or fees which City believes are the responsibility of the Contractor, the City will promptly notify the Contractor and the Contractor will promptly pay such taxes to avoid any additional penalties accruing on such assessments.

b. **City's Taxes, Fees and Charges:** The City is responsible for paying all, charges, levies and assessments against the Site that are not otherwise caused by the presence of the Solar Facility. The City is also responsible for paying all sales, use and other taxes, and any and all franchise fees or similar fees assessed against the City due to the City's purchase of the Energy which are not otherwise the obligation of the Contractor.

37. SECURITY, HEALTH AND SAFETY

The City will provide reasonable measures for the security of the Solar Facility, including restricting access to the area on which the Solar Facility is located and providing commercially reasonable monitoring of the Premises' security alarms. The City will maintain the Premises in a structurally sound and safe condition consistent with all Laws. If City becomes aware of any circumstances relating to the Solar Facility which creates an imminent risk of damage or injury to any Person or any Person's property, City will immediately notify the Contractor's emergency contact identified herein or for the specific City Host Bureau as identified in the Solar Licensing Sub-Agreement of such threat by telephone. If the threat relates to the Premises and not to the Solar Facility, the City shall promptly take such action as is reasonably necessary or appropriate to prevent such damage or injury.

38. NOTICE OF DAMAGE

The City will promptly notify the Contractor of any physical conditions or other circumstances the City becomes aware of that indicate there has been or might be damage to or loss of the use of the Solar Facility or that could reasonably be expected to adversely affect the Solar Facility.

39. TEMPORARY STORAGE SPACE DURING INSTALLATION OR REMOVAL

If the City owns the Site of the solar facility, the City will use commercially reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during any maintenance, repair, replacement or removal of the Solar Facility. City will also provide Contractor a reasonable area for construction type laydown and staging. The City and Contractor will coordinate and cooperate in determining the amount of space required for such purposes.

40. CONDITIONS, CONSTRUCTION AND RESTORATION

Contractor shall inspect the Premises where work is to be performed pursuant to this Agreement and shall fully familiarize itself with its conditions. Subject to Section 14 (Pre-existing Hazardous Materials), Contractor accepts the Premises "AS IS," in its then-present physical condition, including its environmental condition and waives, releases and discharges City from any and all claims of whatever kind relating to the Premises' then-present physical condition, including any claim under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), which Contractor has or may have. Such "AS IS" acceptance is conditioned upon City's full disclosure of all details of Premises condition, any other Liens or encumbrances on Premises which would affect this Agreement and any relevant warranties, including but not limited to the roof warranty, of which City has knowledge. Such "AS IS" acceptance shall not be deemed to invalidate any such warranties. Contractor agrees, represents and warrants that the matters released herein are not limited to matters which are known, disclosed or foreseeable.

a. Construction and Installation: Contractor shall provide to City detailed construction drawings prior to beginning of construction. Contractor shall not begin construction or installation of the Solar Facility until City has issued a Site Access Release signed by the appropriate City Host Bureau project manager. Notwithstanding any such Site Access Release, Contractor is responsible for the means and methods of construction.

b. Structural Requirements: Contractor's installation, maintenance and alteration work shall be performed in accordance with applicable building codes and shall not adversely affect or damage the structural integrity or maintenance of City's property or improvements. If any such work by Contractor adversely affects or damages City's property or improvements, Contractor shall reimburse City for the costs to repair such damage. All costs and expenses associated with any structural work or reinforcement to an improvement that is required to accommodate Contractor's facilities or use shall be the sole responsibility of the Contractor. Contractor shall obtain the approval of a licensed structural engineer for all structural work it performs. City will be provided with a copy of the structural engineer's findings prior to the commencement of construction activities at the Site.

c. Completion of Construction and Construction Defect Warranty upon Exercise of Option: Contractor shall advise City in writing, when construction or installation work at the Premises is completed. Appropriate regulatory staff, including but not limited to City staff, shall be responsible for any inspection work that is required. Regulatory staff may include City staff such as Bureau of Development Service, but it may not necessarily include the City Host Bureau. City shall then have thirty (30) days to inspect Contractor's work and give Contractor written notice of any deficiencies affecting the structural integrity or maintenance of the Premises. Contractor shall correct any construction and installation deficiencies reported by City within sixty (60) days of Contractor's receipt of such written notice. Within thirty (30) days of completion of construction, Contractor shall submit to City a book of approved "as-built" drawings and specifications. Such "as-built" submittal shall consist of ten (10) hard copies and one electronic copy (compact disk format) of the book of "as-built" drawings and specifications. The electronic copy shall be in a compatible software form (e.g., Auto CAD version 2002 or better) approved by Buyer. Notwithstanding the requirements of this Section, Contractor remains responsible for any and all construction defects related to the construction or installation of the Solar Facility.

d. Premises Warranties: City will provide Contractor with a copy of the roof warranty and any other applicable warranties as soon as reasonably possible after construction of the Premises is complete, and before construction or installation of the Solar Facility begins. Contractor will ensure that any roofing warranties are not invalidated or rendered void by Contractor's construction or installation or maintenance of the Solar Facility. In the event that Contractor's acts or omissions negatively impact any warranties and result in actual damage, Contractor agrees to indemnify City for such damage.

PROPOSAL NO. *

e. **Maintenance Repairs:** Contractor shall be solely responsible for performing all maintenance and repairs necessary to keep its panels, facilities, equipment and all other components of the Solar Facility in good condition and repair and in compliance with all Laws.

1. Contractor shall be solely responsible for all annual inspections of the structural integrity of its facilities by a qualified individual for the first three years after the Commercial Operation Date. If no problems are discovered in those three years, structural inspections will then be required once every three years for the duration of the Agreement. If a problem is discovered during the three-year period inspections, the annual inspections shall resume until three consecutive problem-free inspections are attained, upon which the inspections may again resume a three-year period. Upon request by Buyer, Contractor shall deliver copies of all reports prepared in connection with such inspections to Buyer. The maintenance of the Solar Facility shall be the responsibility of Contractor, except for any of City's equipment or buildings, which shall be maintained by Buyer.

2. Contractor shall provide at least ten (10) days advance written notice to City of construction and repair work of a non-routine nature (except for emergency repairs, for which notice shall be given as soon as commercially practicable and for which a permit is not required) on Contractor's Solar Facility or other equipment which may, at City's sole discretion, be subject to a receipt of a Permit under the City's Non-Park Use of Park Property Policy. For purposes of this Section, "non-routine" means any work which is reasonably likely to disrupt City's normal use of or operations on the Property, or to materially change, alter or impact the nature or condition of the Property. Contractor shall make repairs or compensate City for all reasonable costs arising out of any substantial disruption of City's normal use of the Property or any material changes, alterations or impacts to the nature or condition of the Property that result from Contractor's non-routine work, including but not limited to facility closure or significant impairment to facility operation.

3. City reserves the right, in its sole discretion, to make emergency repairs on the Solar Facility, at the sole cost and expense of Contractor, when such repairs are needed on an emergency basis to protect City or the public. City shall notify Contractor of any emergency, if feasible, and shall give Contractor an opportunity to respond to the emergency, if that is feasible without endangering the life, health or safety of City employees or the public or if it would not cause an unreasonable risk to City property.

f. **Performance Guarantee:** Prior to commencement of construction of the Solar Facility under this Agreement, Contractor shall provide City with a performance guarantee, in the form of a bond or dedicated reserve fund in an amount not less than the cost of construction of the Solar Facility, in a form acceptable to the City Attorney, in favor of City, guaranteeing completion of the improvements, payment of Contractor's contractors and subcontractors, and performance of Contractor's obligations under this Agreement applicable thereto, and protection of City's property from damage arising from the construction, maintenance, repair, operation, or removal of the Solar Facility. Contractor shall maintain such performance guarantee in place until the Commercial Operation Date, as defined in Section 42.a.4.

g. **Contractor's Obligation to Restore Premises:** (1) Restoration: Contractor shall, at its sole cost and expense, remove its Solar Facility and restore the Premises in accordance with Section 51.a.3 at the termination of this Agreement, except that Contractor shall have no obligation to restore the Premises if the Agreement terminates due to City's Default, City acquires the Solar Facility, City terminates the Agreement under Section 51.b, or the Parties agree to a Substitution of Premises under Section 48.a.

System Removal Fund: Contractor's obligation to remove the solar facility and restore the premises under Section 4.9, System Removal Fund, if any, will be paid from the System Removal Fund as established by the Contractor in an amount acceptable to City equal to \$250.00 per installed kW. Contractor will be entitled to a return of any unused System Removal Fund upon the earlier of (1) termination of the Agreement due to City's default; (2) City termination of this Agreement under Section 48.f; or (3) Contractor's satisfaction of its obligation under Section 4.9.

41. OPERATIONS AT THE PREMISES

a. **City's Right to Inspect Solar Facility Construction and Maintenance:** City shall have access at all times to the Premises during the periods when Contractor is constructing and installing the Solar Facility and performing work at the Premises, and City shall have the right to inspect the construction and installation work at all times. It is expressly understood by the parties that Buyer, whether or not it conducts Premises

PROPOSAL NO. *

visits or inspections, assumes no responsibility for the quality or adequacy or safety of Contractor's design, construction and installation.

b. Grant of Rights: City hereby grants Contractor a non-exclusive license to use the Premises solely for the purposes stated within and in accordance with the terms and conditions of this Agreement. This license may be revoked only as expressly provided for in this Agreement. All other rights, including the right to grant licenses for uses other than Solar Facility at the Premises, are reserved to Buyer, but will not be exercised in a manner which unreasonably interferes with rights granted Contractor herein.

c. Limitation on Use: The Premises may be used by Contractor only for the installation, construction, operation and maintenance of the Solar Facility, and removal of the Solar Facility, if allowed or required by this Agreement. Contractor shall, at all times, maintain the Solar Facility and the portion of the Premises utilized by Contractor in good condition and repair, reasonable wear and tear excepted, at its sole cost and expense.

d. Security: The portion of the Premises where the Solar Facility is installed shall be secured by Contractor against un-permitted public or third party access.

e. Use by Third Parties: Exclusive of normal operations and maintenance repairs, Contractor shall not permit any third party to install any equipment on any portion of the Premises or on anything constructed by Contractor on the Premises, without the prior written consent of the Buyer. City will not permit any third party uses of the Premises that would substantially and materially interfere with Contractor's use of the Premises pursuant to this Agreement and City will not install any equipment on Solar Facility without Contractor's approval.

f. Approvals: Contractor's right to use the Premises is contingent upon Contractor's obtaining all Approvals.

g. Notice and Remediation of Release: In the event of any release of a Hazardous Material to the environment, the discovery of the presence of Hazardous Materials, or any condition of pollution or nuisance, at, on or about the Premises whether or not as a result of any act or omission of Contractor or its representatives, agents, employees, contractors, customers or invitees, Contractor shall immediately notify City and, to the extent such release results from the act or omission of Contractor, Contractor shall, at its sole cost and expense, promptly undertake all cleanup and remedial measures required to respond to the release or presence of Hazardous Materials in accordance with applicable Environmental Law and as otherwise required by Buyer. If such pollution, nuisance or presence of Hazardous Materials was caused by Buyer, City shall indemnify and compensate Contractor for Contractor's remediation and any associated costs or harms.

h. Action Plan: If any Premises cleanup or remedial measures are conducted by Contractor pursuant to Section 31.c, then Contractor shall, at its own cost and expense, prepare and submit to City for City's approval, the necessary and appropriate action plans for such cleanup or remedial measures. City shall have the right to approve, in its sole discretion, any such action plan prepared by Contractor before the plan is submitted to any appropriate environmental regulatory agency. Contractor shall be solely responsible for completing any action plan as approved by City and the appropriate environmental regulatory agency. Contractor, at its own cost and expense, shall promptly provide City with copies of all documentation, reports and studies regarding all of Contractor's work and all submissions made to any environmental regulatory agency in connection with Contractor's responsibilities pursuant to this Section.

i. Notice of Violation: Contractor shall promptly provide City with written notice of any violation or alleged violation of any Environmental Law alleged by an environmental regulatory agency or third party. Such notice shall include copies of all relevant correspondence related to such allegation.

j. Environmental Inspections: City shall, at all times during the Term, permit Contractor to access the Premises for the purposes of environmental inspections, including, but not limited to, sampling. Contractor shall provide at least seventy-two (72) hours advance notice to City of environmental inspections, and City shall have the right to have a representative present during any such inspections. Contractor shall, at its own cost and expense, provide all information requested by City relating to Contractor's compliance with Environmental Laws.

k. Hazardous Substances: Contractor shall not dispose at, on or about the Premises any Hazardous Substance (as defined in ORS 465.200, and as hereafter amended, and in implementing regulations of the

PROPOSAL NO. *

State of Oregon Department of Environmental Quality), and shall handle all Hazardous Substances in a manner that protects the Premises and the environment from accidental spills and releases. Contractor or any of its officers, employees, agents, contractors, subcontractors, servants, successors, assigns, sublessees, licensees, or invitees shall not cause or permit to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the Premises, whether affecting surface water or groundwater, air, the land or the subsurface environment.

I. Non-Interference with Operations: Any construction, reconstruction, maintenance, repair and operation of the Solar Facility on the Premises and all work in connection therewith shall be performed in a manner that shall not interfere with City's or its patrons' use of the Premises, or with City's construction or maintenance work or City's radio or other communications at the Premises, unless prior written approval is granted by Buyer.

1. For purposes of this Subsection, such prohibited interference includes, but is not limited to, damage or interference resulting from power surges or disruptions caused by the construction, reconstruction, maintenance, repair or operation of the Solar Facility.

2. City shall not use, or permit others to use, the Property in any manner that substantially and unreasonably interferes with the Solar Facility or with the rights of Contractor under this Agreement.

3. Damage to City Property: If any property of City is damaged, destroyed or disturbed by Contractor's activities on the Premises, Contractor shall promptly notify City and shall, at City's option, either repair or replace the affected property at Contractor's expense or shall reimburse City for its reasonable costs of repairing or replacing the affected property.

42. ACCEPTANCE TESTING, METERING, INVOICING AND PAYMENT

a. Solar Facility Acceptance Testing: The Contractor will conduct one or more tests on the Solar Facility during construction to confirm the operation of then installed capacity of the Solar Facility. Each City Host Bureau is encouraged to have a representative present at the tests. Valuable information shall be provided that will be needed if and when emergency/shut-off conditions occur. Commercial operation will begin after:

1. One hundred percent (100%) of the nameplate capacity has been installed;
2. Testing indicates that the Solar Facility is capable of producing Energy at no less than the nameplate capacity;
3. The Solar Facility has operated for a period of not less than five hours at the efficiency expected under conditions existing at time of testing and consistent with manufacturing standards for construction of the Solar Facility without experiencing any abnormal or unsafe operating conditions; and
4. The Contractor has acquired all permits necessary to authorize the production, sale and delivery of Energy in the intended amounts. If testing is performed on a day with relatively low solar radiation, City may request that the test be performed again on a day with more favorable solar conditions. The City may attend the testing session at its own cost. The Commercial Operation Date, (COD), will be the third (3rd) day following the Contractor's delivery of notice to the City that the Solar Facility is ready for commercial operation. The definition of Commercial Operation Date is addressed in Section 7 Definitions.

b. Estimated Annual Production: Set forth on Exhibit E is the expected annual output of the Solar Facility during each year of the Term. The City acknowledges that the Estimated Annual Production amounts shown on Exhibit F are estimates for planning purposes only and do not represent guaranteed levels of the delivery of Energy.

c. Metering of Delivery: Contractor shall measure the amount of Energy supplied to City at the Point of Delivery using a commercially available revenue grade metering system. The meter shall be installed, repaired, and maintained at Contractor's cost. City shall cooperate with Contractor to enable Contractor to have reasonable access to the meter as needed to inspect, repair and maintain such meter. At Contractor's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Contractor to remotely read the meter. If Contractor elects to install telemetry allowing for remote reading, City shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Contractor breaks a

PROPOSAL NO. *

seal, Contractor shall notify City as soon as practicable. If only a physical meter at the Point of Delivery is installed, Contractor shall read the meter approximately quarterly. If telemetry allowing remote reading is installed, Contractor shall provide City a monthly summary of Energy delivery for information purposes only.

43. INDUSTRY STANDARDS: Except where a higher standard may be expressly required by the terms of this Sub-Agreement, for the purpose of this Sub-Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

44. WARRANTIES: The Contractor shall guarantee its products and workmanship to be free from defects in materials and workmanship over the period of the manufacturer warranty and to protect the affected City property during that time. The Contractor shall agree to repair and/or immediately replace any product or part thereof, which proves to be defective or fails within the warranty period as specified. Acceptance testing detail is provided in Section 42.a. Acceptance Testing, Metering, Invoicing, and Payment. The Contractor shall provide the following warranties *[include those that might apply to the specific project]*:

- a. Photo voltaic Power Modules shall be warranted for at least 20 years with a minimum 80% performance at 20 years. No more than 10% power output degradation in the first 10 years and no more than 20% power output degradation in the first 20 years from date of purchase will be acceptable. Non-performing panels shall be replaced by the Contractor with equal or upgraded panels at no cost to the City. It is anticipated that technology will change over the course of 20 years.
- b. 10-year inverter warranty
- c. 20-year roof and building penetration warranty.
- d. Roof penetrations shall be made after consultation with the City's roofing contractor and in conformance with the existing roof warranty.
- e. All exposed quick-connect wiring shall be warranted against UV degradations for a period of 20 years.
- f. All metals used in the construction of the system including, but not limited to, PV modules and array support structures shall be warranted against degradation for 10 years.
- g. Comprehensive re-commissioning of the system will take place prior to the end of PPA contract if the City elects to purchase the system.
- h. Comprehensive re-commissioning tasks shall allow the City to purchase the system in a working condition.

45. ADDITIONAL PROJECT SITES

The City reserves the right to enter into additional Solar Facility Licensing Sub-Agreements for project sites beyond those previously stated in the request for proposal. Such additional project sites are not guaranteed and will be made at the City's sole discretion. Each participating bureau will be required to execute its own Solar Facility Licensing Sub-Agreement with the Contractor for its requirements.

Following any initial purchase(s) by the City of Portland, additional Solar Facility Licensing Sub-Agreements may be executed in order to incorporate additional project sites and will be amended by the various agencies and/or City Host Bureaus.

46. RIGHT TO CHANGE: The City reserves the right to order changes to the Solar Facility Licensing Sub-Agreement and any services outlined herein. The City and the Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the parties.

47. SUSPENSION OF THE WORK: The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Agreement. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

48. SUBSTITUTION

a. Substitution of Premises: If there is a change in conditions that prevent operations at the Solar Facility, the City will have the option of providing the Contractor a mutually agreeable substitute location on which Contractor may operate the Solar Facility. The reasons substitution may occur include the following: City vacates property, City changes use of the property, force majeure event occurs (see Section 24), or City no longer conducts business operations. If the substitution is caused by a force majeure event, the City will not reimburse the contractor its pro-rata share of the annual license fee for the period when the Solar Facility is not in operation. If the substitution is not caused by a force majeure event, the City will reimburse the Contractor its pro-rata share of the annual license fee when the Solar Facility is not in operation. The City will provide at least ninety (90) days' written notice before the date on which it desires Contractor to begin removal of the Solar Facility.

b. Substitute Agreement: In connection with any location substitution, the City must execute an amendment that has all of the same terms as this Agreement, other than the location of the Premises, the Commercial Operation Date and the term of such amended Agreement. The term of the amended agreement will be equal to the remaining Term of this Agreement, as calculated from the date that the Solar Facility is disconnected to the end of the Term. The City agrees to execute any necessary documents with the Contractor's lender, if any, in connection with the location substitution provided that the new documents do not materially change the terms of this Agreement.

c. Removal of Solar Facility at Substitution: If the Contractor and City have agreed upon a substitute location for the Solar Facility pursuant to Section 48.a, Substitution of Premises, the Contractor will remove the Solar Facility from the Premises prior to the termination of the City's ownership, lease, or rights to use the Premises. The Contractor will not be required to restore the Premises to its prior condition but shall promptly pay the City, for any damage caused by the Contractor during removal of the Solar Facility.

49. DEFAULTS

a. Contractor Defaults: The following events shall be considered to be a default of the contract with respect to Contractor (each a "Contractor Default"):

1. Contractor fails to pay any undisputed amounts due City pursuant to this Agreement and such breach remains uncured for thirty (30) Business Days following notice of such breach to the Contractor;
2. Contractor breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice from City specifying the breach, provided that if such breach cannot, with due diligence, be cured within a period of thirty (30) days, Contractor shall not be deemed to be in default if Contractor begins to cure the failure within such thirty (30) day period, thereafter diligently prosecutes such cure to completion, and obtains such cure within a reasonable time thereafter;
3. Contractor (A) commences a voluntary case under any bankruptcy law; (B) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Contractor in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against Contractor remains un-dismissed or un-discharged for a period of sixty (60) days.

b. City Defaults: The following events shall be defaults with respect to City (each, a "City Default"):

1. City fails to pay any undisputed amounts due Contractor pursuant to this Agreement and such breach remains uncured for thirty (30) Business Days following notice of such breach to the Contractor;
2. City breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice from Contractor specifying the breach, provided that if such breach cannot, with due diligence, be cured within a period of thirty (30) days, City shall not be deemed to be in default if City begins to cure the failure within such thirty (30) day period, thereafter diligently prosecutes such cure to completion, and obtains such cure within a reasonable time thereafter; and
3. City refuses to sign authorizations needed to obtain any Environmental Attributes or Environmental Incentives in the absence of a material breach of contract by the Contractor or purposefully breaches any term of the Interconnection Agreement required for interconnection of the Solar Facility (reference Exhibit D).

50. REMEDIES

a. City Remedies: City may terminate this Agreement (1) upon at least thirty (30) days prior written notice to Contractor if a Contractor Default described in Section 49.a has occurred, or (2) immediately upon the expiration of the cure period if a Contractor Default described in Section 49 has occurred and is continuing. In addition to any other remedy hereunder, City may pursue any other remedy given under this Agreement or existing at law or in equity or otherwise.

In addition, in the event of a default, the City may purchase substitute electrical services from another contractor and the Contractor shall be liable for all additional re-procurement costs and any additional electrical costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Agreement, the remedies for a breach of this Agreement shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available or may become available.

Notwithstanding a contract default, the City shall pay the Contractor for goods delivered and services performed in accordance with the Agreement before the termination date, which amount is subject to an offset for costs incurred by the City as a result of the Contractor's default.

Other remedies for the City include:

1. City may offer to buy the Solar Facility.
2. City may run the facility with the use of another party. Contractor shall pay all labor and capital costs to run the Solar Facility.

b. Contractor's Remedies: If a City Default described in Section 49.b. (1), (2) or (3) has occurred and is continuing, Contractor may terminate this Agreement immediately upon the expiration of the respective cure periods set forth in such provisions; and in addition to any other remedy hereunder, Contractor may:

1. Cease the provision of Energy from the Solar Facility.
2. Remove the Solar Facility from the Premises in compliance with the terms of this Agreement. (See Section 4.9 System Removal Fund)
3. Pursue any other remedy given under this Agreement or existing at law or in equity or otherwise.
4. Terminate the agreement following the procedures set forth in Section 51(a)(2) and (3) Termination.
5. City shall reimburse the Contractor its pro-rata share of the annual license fee.

51. TERMINATION

a. Contractor Termination:

1. Termination By Contractor for Commercial Reasons: If at any time before the Commercial Operation Date, any necessary approval for operation of the Facility cannot be obtained, for reasons without any fault of the Contractor, the Contractor may terminate this Agreement. In such event, Contractor shall provide City with a minimum of one hundred twenty (120) days prior written notice of Contractor's intent to terminate the Agreement. In the event of such a termination under this Section, Contractor shall, at the time notice of termination is given, pay a termination fee (the "Termination Fee") in an amount calculated as follows:

[XXXXX to be determined]

The Termination Fee shall be paid to the same payee(s) and in the same manner as required in this Agreement for the Annual License Fee for the Premises in question for the period of time on and after the effective date of the termination. If a regular Annual License Fee payment date for the Premises falls between the date on which the Termination Fee is paid and the date on which the termination becomes effective, no further payment shall be required on such regular payment date.

In the event that Contractor terminates under this Section, it shall restore the Premises as required under Section 40.g herein.

2. Early Termination by Contractor and City: The City and the Contractor, by mutual written agreement, may terminate the Agreement at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Agreement in the event of a material

PROPOSAL NO. *

breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and the party's intent to terminate. If the party has not entirely cured the breach within thirty (30) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. In the event of early termination, all of the Contractor's work product shall become and remain property of the City.

3. Removal of Solar Facility and Restoration of Premises at Expiration, Early Termination or Event of Default: Unless otherwise provided, if Contractor is required or permitted under this Agreement to remove the Solar Facility, such removal will occur within sixty (60) days of termination of the Agreement. The Premises will be returned to its original condition. The Contractor will take care to assure that the removal of the Solar Facility will not affect the integrity of the City's Premises, which will be as leak proof as it was prior to installation of Solar Facility. All of the City's obligations to provide access shall remain in full force and effect until removal is complete. If the Contractor fails to remove or commence substantial efforts to remove the Solar Facility within the sixty (60) day period, the City has the right, upon ten (10) days' notice to Contractor, to (1) have the Solar Facility removed and stored in a public warehouse at Contractor's cost or (2) undertake the restoration of the Premises to its original condition at Contractor's cost; provided, however that City may not undertake any improvements or betterments to the condition of the Premises at Contractor's cost.. In the event that Contractor terminates under this Section, it shall restore the premises as required under Section 40.g herein.

b. City Termination:

1. Termination By City for Contractor's Failure to Obtain Third-Party Approvals: If Contractor has not obtained all Approvals within six (6) months after the Effective Date, City may terminate the Agreement if Contractor has not obtained such Approvals within 30 days of receipt of notice from City of City's intent to terminate. Contractor agrees to begin the application process for such Approvals within thirty (30) days after the Effective Date and to pursue such Approvals diligently thereafter; provided that if Contractor inadvertently fails to apply for an Approval within such thirty (30) day period, such omission shall not constitute a breach of this Agreement if (a) Contractor timely obtains such Approval and (b) City is not otherwise materially damaged by such inadvertent omission.

2. Termination for Convenience: City may terminate this Agreement if City's own use of or need for the Premises, or conditions (including, without limitation, environmental conditions) at or near the Premises, require relocation of the Solar Facility.

a). To the extent practicable, City shall provide Contractor with at least one hundred eighty (180) days written notice of intent to terminate this Agreement under this Section. In all events, City shall, before exercising its rights under this Subsection, give Contractor reasonable notice of its intent to do so.

b). Contractor's obligation to pay an Annual License Fee for the use of the Premises shall cease on the termination date specified in City's notice of termination. If the regular Annual License Fee payment date for the Premises falls during the period of time between the notice of termination and the termination date specified therein, Contractor shall pay a pro-rata portion of the Annual License Fee for the partial year ending on such termination date.

c). Upon City's notice of termination of this Agreement under this Section or Contractor's Termination under Section 51.a. City shall pay an Early Termination Fee to Contractor. The Early Termination Fee is equal to the sum of the following amounts:

[XXXXX to be determined]

3. Early Termination by Contractor and City: The City and the Contractor, by mutual written agreement, may terminate the Agreement at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Agreement in the event of a material breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and the party's intent to terminate. If the party has not entirely cured the breach within thirty (30) days of the

PROPOSAL NO. *

notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. In the event of early termination, all of the Contractor's work product shall become and remain property of the City.

4. Removal of Solar Facility and Restoration of Premises at Expiration, Early Termination or Event of Default: Unless otherwise provided, if Contractor is required or permitted under this Agreement to remove the Solar Facility, such removal will occur within sixty (60) days of termination of the Agreement. The Premises will be returned to its original condition. The Contractor will take care to assure that the removal of the Solar Facility will not affect the integrity of the City's Premises, which will be as leak proof as it was prior to installation of Solar Facility. All of the City's obligations to provide access shall remain in full force and effect until removal is complete. If the Contractor fails to remove or commence substantial efforts to remove the Solar Facility within the sixty (60) day period, the City has the right, upon ten (10) days' notice to Contractor, to: (a) have the Solar Facility removed and stored in a public warehouse at Contractor's cost or (b) undertake the restoration of the Premises to its original condition at Contractor's cost; provided, however that City may not undertake any improvements or betterments to the condition of the Premises at Contractor's cost.. In the event that Contractor terminates under this Section, it shall restore the premises as required under Section 40.g herein.

52. PAYMENT UPON EARLY TERMINATION: In the event of termination pursuant to Solar Master City Agreement, Section 51.a.2 and 51.b.3. Early Termination by Contractor and City, the City shall pay the Contractor for goods and services in accordance with the Agreement prior to the termination date and delivered to City provided that such goods and services conformed to the Agreement.

Under no circumstances shall the City be subject to early termination penalties for recurring charges for goods or services that the City cancels during the term of this Agreement.

53. PERMITS AND LICENSES: The Contractor shall be required to have or obtain, at it's expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

54. INTELLECTUAL PROPERTY: The City requires the following regarding copyrighting and patent pending on work products pertaining to this Agreement:

a. Copyright: All work products of the Contractor, including the design of the solar facility, which result from this Contract are the exclusive property of the City. If this Agreement results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Agreement and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.

b. Patent: If this Agreement results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

55. PROPRIETARY AND CONFIDENTIAL INFORMATION:

a. No Infringement: The Contractor is responsible for ensuring that neither the Solar Facility nor any of Contractor's services provided to the City pursuant to this Sub-Agreement infringes on any third party's intellectual property or other proprietary rights.

b. No Third Party Conflict or Infringement. Contractor warrants the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.

c. Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, and agents from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Solar Facility of any proprietary right of

PROPOSAL NO. *

any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing use of the Solar Facility shall be made without the City's prior written consent. (B) If any third party claim causes the City's use of the Solar Facility to be endangered, restricted or disrupted, Contractor shall (i) cause the Solar Facility, or infringing portion therefore, to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Solar Facility to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Solar Facility for the term of this Contract and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence none of the foregoing alternatives is possible, the City may terminate the contract for default.

56. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

a. Marketing: In marketing materials describing the Solar Facility, each Party will use reasonable efforts to acknowledge the other Party as well as **XXXXX** in any marketing or promotional materials regarding the Solar Facility, except if such parties do not want to be mentioned. Such attribution will include use of the logos of the parties involved in the project in all written promotional materials, where appropriate and space permits. Each Party will consult with and seek the other parties approval prior to using the others party's logos, trademark, or brand markings.

57. PRICES AND PRICE CHANGES: Any changes in Federal investment tax credits and depreciation, Oregon energy tax credits or Energy Trust programs, if any prior to the execution of the Solar Facility Licensing Sub-Agreement. And in subsequent years will be addressed during the negotiation of the Sub-Agreement.

Ownership of the electricity's Renewable Energy Certificates (RED's) or other environmental attributes will be transferred to the City Host Bureau unless REC ownership is a requirement for funding from Energy Trust.

The Contractor shall be required to pay the City Host Bureau an annual license fee of \$10.00 per installed kW for the use of the site.

Initial Contract prices shall remain firm through the first full year of the Contract. At the end of the one-year period following the Commercial Operation Date, (COD), which will be the third (3rd) day following the Contractor's delivery of notice to the City that the Solar Facility is ready for commercial operation, changes may be allowed herein. Definition of Commercial Operation Date, (COD), appears in Section 7 Definitions and Section 42.a. Acceptance Testing, Metering, Invoicing and Payment. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract if and when requested by the City. Following the end of the one year period referenced above, City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may need to be adjusted up or down during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between Contractor and City's Purchasing Agent as Sub-Agreements.

Contractor shall submit any proposed upward pricing revisions in writing to the Project Manager for consideration at least thirty (30) days before the proposed effective date. All proposed upward price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Contractor's original proposal. The Contractor shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the contract Sub-Agreement document or as otherwise stated therein. Price adjustments shall not be retroactive and will become effective once an amendment to the Contract is executed.

58. MICELLANEOUS:

a. Any reference in this Agreement to the scope of work, or Solar Licensing Sub-Agreements are intended as a convenience to the parties in administration of the Agreement. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Agreement of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.

PROPOSAL NO. *

b. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Agreement.

c. The Contractor certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the proposal or resulting Agreement, that the proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.

59. ENTIRE AGREEMENT: The City Master Solar Agreement and attachments represent the entire Agreement between the parties. There are no promises or other agreements that are not contained within the Solar Master Agreement and its attachments.

IN WITNESS WHEREOF, Contractor and City have caused this Agreement to be executed in triplicate by their duly authorized representative(s), all on the day and year first above written.

XXXXXX

by _____

Name and Title

Approved as to form:

Address: XXXXXX

XXXXXX

Telephone No: XXXXXX

Fax No: XXXXXX

City Attorney

CITY OF PORTLAND

by _____

Purchasing Agent

INITIALS: bg

DATE: 11/28/08

APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public Contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, ORS Chapters 279A, 279B and 279C require every public Contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable.

Pursuant to ORS 279B.220, on every public Contract, the Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the Contract; shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- Pursuant to ORS 279C.505, on public improvement Contracts, the Contractor shall make payments promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in such Contract. The Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.

- Pursuant to ORS 279C.510 (1), in every public Contract for demolition the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public Contract and every public improvement Contract for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

- Pursuant to ORS 279B.230(1), in every public Contract, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, Contract or agreement for the purpose of providing or paying for the services.

- Pursuant to ORS 279B.230(2), in every public Contract, all subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

- Pursuant to ORS 279C.515(1), on public improvement Contracts, if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with the public Contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such Contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

- Pursuant to ORS 279C.515(2), on public improvement Contracts, if the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement Contract within 30 days after receipt of payment from the Contract agency or a Contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Contracting agency or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- Pursuant to ORS 279C.515 (3), in every public improvement Contract and every Contract related to the public improvement Contractor, if the Contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

PROPOSAL NO. *

for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The Contractor shall give notice to employees who work on a public Contract in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of Contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these Contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under Contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The Contractor shall give notice to employees who work on a Contract for services in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

- Pursuant to ORS 279C.530(1), in every public improvement Contract, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, Contract or agreement for the purpose of providing or paying for such service. In every public Contract, subject to ORS 279C, all employers working under the Contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the Contractor shall include in each public improvement subcontract for property or services entered into by the Contractor and a subcontractor, including a material supplier, for the purpose of performing a construction Contract, a payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the public Contracting agency under such Contract, and an interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).
- Pursuant to ORS 279C.580(4), the Contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such Contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

PROPOSAL NO. *

EXHIBIT B

**SOLAR FACILITY LICENSE
SUB-AGREEMENT # _____**

by and between

**XXXXX
and**

**CITY OF PORTLAND,
Bureau of XXXXX**

dated as of

_____, 2009

CITY OF PORTLAND
CONTRACT NO. XXXXX

Solar Facility Licensing Sub-Agreement #XXXXX

PROJECT SITE:

LOCATION:

DESCRIPTION AND TIME OF WORK: The Contractor shall develop all interim and final design/engineering specifications, coordinate and arrange financing for, and provide labor, equipment and materials as required for the construction, installation, operation, and maintenance of a turn-key, hosted solar photovoltaic system (PV) at XXXX, XXXXX [address] XXXXX during the course of this Solar Facility Licensing Sub-Agreement in accordance with the Solar Facility Description (Attachment A). The Contractor and/or their financial partner(s) will sell the solar generated electricity to the City of Portland, Bureau of XXXXX (City Host Bureau) for hosting the system. No City funds will be contributed toward the system cost.

The effective date of this Solar Facility Licensing Sub-Agreement shall be on XXXXX, 2009 and is entered into between the City of Portland, Bureau of XXXXX and XXXXXX. As provided below, the City of Portland, Bureau of XXXXX grants to XXXXX certain access rights to install, own, operate and maintain the Solar Facility at the (insert location) and to sell the electricity generated by the Solar Facility to the Bureau of XXXXX for the Bureau's use.

The Parties agree as follows:

1. REQUIRED SERVICES: The selected Contractor will perform the tasks listed below for this project. All work shall be in conformance with the City of Portland Solar Master City Agreement for Solar Electric Photovoltaic Systems and this Solar Facility License Sub-Agreement. No work shall begin until the Solar Facility License Sub-Agreement has been executed by the contractual parties. The Contractor shall be expected to work closely with designated City of Portland bureau personnel to accomplish the goals and perform the tasks as listed below:

1.1 General Information

- a. The Contractor will develop sub-contracting agreements for the solar installations. Under this Sub-Agreement, the Contractor shall be required to design, build, own, operate, maintain a PV system and sell the generated electricity to the Host City Bureau. No City funds will be contributed toward the system cost.
- b. As a separate line item, the Contractor has reflected the value of solar tax incentives to be: XXXXX.
- c. Ownership of the electricity's Renewable Energy Certificates (RECs) or other environmental attributes will be transferred to the Host City Bureau, unless REC ownership is a requirement for funding from Energy Trust. .
- d. The Contractor may be required to pay the Host City Bureau an annual license fee of not more than \$10.00 per installed KW, for the use of the Site.

2. WORK PERFORMED BY THE CITY: City staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide information as required. The City has assigned a general project manager, XXXXX, who will be responsible for the work performed under this Sub-Agreement.

The Contractor will be provided with record drawings, CADD files, solar surveys and other information required to complete the specific Host City Bureau project. City staff shall review submitted reports, interim findings, contract documentation, and any other documentation pertinent to the project. The Contractor and Bureau staff shall be responsible for completing any inspection work that is required.

Additional work provided by the City shall include: *[insert any additional work or documentation to be supplied by the City Host Bureau]*

- a. _____

- b. _____
- c. _____

3. DELIVERABLES AND SCHEDULE; Deliverables shall be considered those tangible resulting work products which are to be delivered to the Host City Bureau such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Reports produced shall require a stamp by an Oregon P.E., in the pertinent area of expertise. Deliverables and schedule for this project shall include, but not be limited to the following *[include those pertinent to the project]*:

- a. Design, Engineering, Permitting and Incentives - Design documents as requested in 4.1 of the Solar Master City Agreement.
- b. Electrical interconnection—Results of application, study, and testing procedures as requested in 4.4 of the Solar Master City Agreement.
- c. Commissioning and Acceptance Test for Initiating the Power Sales Agreement—Results of required commissioning and acceptance test services as requested in 4.5 of the Solar Master City Agreement.
- d. Operation and Maintenance—Results of structural and roof inspections requested in 4.6 of the Solar Master City Agreement.
- e. Manuals and Drawings—Three (3) sets of site-specific operation, maintenance, equipment and parts manuals for each installed solar PV system as requested in 4.7 of the Solar Master City Agreement.
- f. System Removal Fund and Roof Repair/Replacement-Annual verification that monies are accruing to the System Removal Fund as requested in 4.9 of the Solar Master City Agreement.
- g. Warranties and Guarantees—Signed copies of warranty and guarantee agreements as requested under 4.4 of the Solar Master City Agreement..
- h. Public Education and Monitoring—Demonstration of the public education and monitoring site as requested in 4.10 above.

All deliverables and resulting work products from this Agreement will become the property of the City of Portland. The Bureau of XXXXX requires the following: *[bureau to specify the particular deliverables they require to be completed]*

- a. _____
- b. _____
- c. _____

4. TECHNICAL REQUIREMENTS: *[include specifications pertinent to the Project/Site location]*

5. PERIOD OF PERFORMANCE: The period of performance for this project site shall be from XXXXX through and including XXXXX. This Sub-Agreement includes warranty and maintenance work which may extend beyond the original contract period.

6. TIME IS OF THE ESSENCE: Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

7. ENERGY PRICE: The Energy Price and Annual Production is set forth in Attachment B to this Agreement. The Energy Price will be the only consideration paid by the City for Energy delivered by the Contractor under this Agreement.

8. CONTRACTOR'S RIGHTS, DUTIES AND OBLIGATIONS;

a. **SALE OF ENERGY:** Contractor will sell to City and City will purchase from Contractor all of the Energy produced by the Solar Facility, as and when the same is produced, at the Energy Price provided for herein. Contractor will deliver the Energy to the Host City Bureau as described in the Solar Licensing Sub-Agreement (reference Exhibit B), and Host City Bureau will accept the Energy delivered for the Term of this Agreement.

b. **MONITORING, METERING AND BILLING:** Contractor shall provide all monitoring, metering, billing, invoicing and administrative services necessary to fulfill Contractor's duties under this Agreement.

9. ANNUAL LICENSE FEE: The Contractor shall pay City an annual license fee of \$10.00 per installed kW for the use of the Premises. The Annual License Fee shall increase by XXXXX% of the License Fee for the previous year. The first payment of the Annual License Fee shall be due and payable upon the Effective Date of this Agreement. The Annual License Fee for each calendar year of the Term shall be due and payable in advance on January 1 of such calendar year. Payments for the partial years at the beginning and end of the Term shall be prorated.

Payments of Annual License Fees shall be sent to City at the address specified in Article 10 (Notices) or such other address as Buyer may notify Seller from time to time.

Any payment, or portion thereof, that has not been made within thirty (30) days after the due date shall bear interest at the lesser of one and one quarter percent (1-1/4%) per month, compounded monthly, or the maximum rate permitted by Law, from the due date until the date that payment is made.

10. INVOICING: The Contractor and/or their financial partner(s) will sell the solar generated electricity to the City of Portland, Bureau of XXXXX for hosting the system. No City funds will be contributed toward the system cost. The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Contractor shall submit billings for the solar generated electricity to the Host City Bureau in a timely fashion. Invoices shall be sent to:

City of Portland
XXXXX
XXXXX Attn: XXXXX
Portland, OR 97204

The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Contractor will invoice the City for Energy delivered within ten (10) Business Days after the end of the prior quarterly billing period. The Contractor shall submit billings in a timely fashion. Each invoice shall set out the amount of Energy delivered in kWh during the prior billing period and the Energy Price then applicable, and the amount then due including any taxes assessed on the delivery and sale of Energy to City at the Point of Delivery. Such invoice shall include sufficient details so that the City can reasonably confirm the accuracy of the invoice including, among other details, beginning and ending meter readings.

Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the solar generated electricity and services to the City in paper form. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

City shall make payments to Contractor for Energy at the address specified by Contractor in the Solar Facility License Sub-Agreement. If made by mail, payment shall be posted within thirty (30) days following the date the Contractor sent the invoice to the City of Portland. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments posted after the due date shall be considered late and shall bear interest on the unpaid balance. Additional billing details may be agreed upon between the parties. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of the billed goods and services.

Revised invoices or billing adjustments shall apply only when they can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the goods and services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. Billing adjustments shall not be submitted to the City in any form other than a paper document. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, goods and services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the parties, without prior written City approval.

11. NOTICES: Any notice required, permitted, or contemplated in this Agreement shall be in writing unless otherwise stated and shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder:

CONTRACTOR:

XXXXXX
XXXXXX
XXXXXX

Attn: XXXXXX

CITY:

City of Portland
Office of Transportation
Bureau of XXXXX
XXXXXX
XXXXXX
XXXXXX

If either party changes its address or if a party's representative changes, the other party shall be advised of such a change in writing, in accordance with this section.

11.1 Immediate Notice of Damage to the Solar Facility: In addition to the City's duty to immediately notify the Contractor if the City becomes aware of a risk or the threat of a risk to Persons or property, the City will promptly notify the Contractor by telephone if the City becomes aware of any of the following conditions:

- a. Damage to the Premises caused by the operation, maintenance or repair of the Solar Facility; or
- b. Damage to the Solar Facility from any cause. After such notice, City agrees that the Contractor may immediately inspect the Solar Facility and the area of the Premises on which the Solar Facility is located to determine whether further operation of the Solar Facility at that location is safe.

11.2 Acceptable Means of Delivering Notice: Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

- a. if sent by United States mail with proper first class postage prepaid, three (3) calendar days following the date of the postmark on the envelop in which such notice was deposited in the United States mail;
- b. If sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;
- c. If sent by fax and if concurrently with the transmittal of such fax the sending Party contacts the receiving Party at the phone number set forth above to indicate such fax has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such fax is transmitted by the sending Party as shown by the fax transmittal confirmation of the sending Party; or
- d. If delivered in person, upon receipt by the receiving Party. If email addresses are specified above, copies of notices shall be sent to the receiving Party's email addresses.

12. AMENDMENTS: This Sub-Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of the Contractor and the City's Purchasing Agent.

13. ENTIRE AGREEMENT AND INTEGRATION OF EXHIBITS: The Solar Master City Agreement combined with this Sub-Agreement, together with any Attachments XXXX and/or Exhibits XXXXX attached hereto, constitutes the entire agreement and understanding between the Contractor and the City of Portland, Host City Bureau, with respect to the subject project and supersedes all prior agreements relating to this project, which are of no long in force or effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

XXXXXX

PROPOSAL NO. *

By: _____

Name: XXXXX, XXXXX(title)XXXXX

CITY OF PORTLAND

By: _____

Name: Jeffrey B. Baer, Purchasing Agent

Approved as to Form

Chief Deputy City Attorney

ATTACHMENT A
TO SUB-AGREEMENT # _____
SOLAR FACILITY DESCRIPTION

The Solar Facility will consist of an approximately _____ kilowatt photovoltaic solar power system with _____ (description of system) _____ located on the newly constructed building ("Premises") located at _____ (the "Site"), which is owned by the City of Portland.

1. **Site Name:**
2. **Point of Delivery (Location):**
3. **Site Legal Description/Premises** *[premises means the building at the Site on which the Solar Facility lies]:*
4. **Solar Facility System Specifications and Description:**
Description of Educational Display Kiosk:

Estimated Costs of Solar Facility Equipment and Installation:

City Goals and Objectives: *[identify which goals (or additional) goals will be attained by this project]:*

- a. As Sub-Agreements to this Agreement are executed, install solar electric photovoltaic systems, (PV), on roofs and other City-owned space and maximize renewable energy production.
 - b. Contract with a qualified PV system owner with demonstrated experience in high quality system design, installation, ownership, operation and maintenance.
 - c. Contract with a solar system owner who is able to leverage state and federal tax incentives and if applicable, the financial resources offered by the Energy Trust.
 - d. Purchase electricity at a price near that of our present utility rates.
 - e. Purchase electricity with a predictable annual price escalator,
 - f. Add long-term economic value to City facilities by employing thoughtful designs and materials that are of investment grade quality and the option for ownership by City Bureaus.
 - g. Receive an annual license fee for the use of its site.
 - h. Support the growth of clean energy businesses in the Portland metropolitan region.
 - i. Include solar and renewable energy educational elements where practical. Consider public interpretive kiosks, displays, signage and or web-based resources.
5. **On- site Educational Programming.** Contractor and City shall make their best endeavors to coordinate the provision of structured educational programs designed to further the conservation of energy. All educational programs will be coordinated through *[insert City contact]:*

Standard Access and Security Procedures:

ATTACHMENT B TO SUB-AGREEMENT # _____

ENERGY PRICE AND ANNUAL PRODUCTION FORECAST

Energy Price.

The Energy Price will be \$_____ per kWh with an annual increase of ____ %.

The Solar Hot Water Pricing will be \$_____ per Therm with an annual increase of ____%
(off-sets equivalent of _____ annual kWhs of electricity)

Annual Production Forecast:

Year:	Production forecast in MW/h
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT C

City of Portland Security Agreements

The following Security Forms are provided for reference purposes only:

1. Informed Consent Release Hold Harmless Waiver
2. Applicant BG Information Form 70711
3. Background Investigation Request
4. Non-Disclosure Agreement (non-sworn)
5. Level 1 (Contractor) Background questions

This agreement is available at the following FTP site:
<https://ftp01.ci.portland.or.us>

To log in, please enter the following information:
Name: water-solarpower-outgoing
Password: solarpower

Please use all lower case letters.

EXHIBIT D
AGREEMENT FOR NET METERING AND
INTERCONNECTION SERVICES (LEVEL 1, 2, AND 3
INTERCONNECTION)

Agreement for Net Metering and Interconnection Services

This agreement is available at the following FTP site:
<https://ftp01.ci.portand.or.us>

To log in, please enter the following information:
Name: water-solarpower-outgoing
Password: solarpower

Please use all lower case letters.

This agreement is provided for informational purposes.

EXHIBIT E PROJECT SITES

Four Bureaus--Portland Water Bureau, (PWB), Office of Management and Finance-Facilities Division, (BGS), Bureau of Environmental Services, (BES) and the Bureau of Parks are interested in installing solar electric photovoltaic systems at sites in the City of Portland. Additional information for each Bureau is provided in tables 1, 2, 3, and 4 below.

Solar Surveys may be obtained by going to the following FTP site:

Information for the FTP site is as follows:
<https://ftp01.ci.portland.or.us>

To log in, please enter the following information:
 Name: water-solarpower-outgoing
 Password: solarpower

Please use all lower case letters.

Portland Water Bureau

PWB has completed a Solar Resource Survey Site Assessment for several groundwater and well sites in the Columbia South Shore Well Field, located near its Groundwater pump station. Estimated average annual site kWh usage figures have been prepared, and they appear in the summary table below.

Table 1: Water Bureau

General Description	Master Site Address	Potential kW DC Production	Power Provider	Mount	Estimated Average Annual Site kWh Usage
Well #8	4140 NE 185 th Avenue	70*	PGE Schedule 83S	Ground	40,000
Well #11	14090 NE Jarrett Street	50*	PGE Schedule 83S	Ground	75,000

*Potential kW DC production rates may be reduced from this figure due to exclusion of land for pipe easements and area required for PWB operations and field work.

Table 2: Office of Management and Finance-Facilities Division

General Description	Master Site Address	Potential kW DC Production	Power Provider	Mount	Estimated Average Annual Site kWh Usage
Kerby Building	2929 N. Kerby Portland, OR	235	Pacific Power Schedule 28	Concrete Roof	550,000
NE Police Precinct	449 NE Emerson Portland, OR	235	Pacific Power Schedule 28	Roof	1,200,000
PGE Park, Stadium Canopy	1844 SW Morrison Portland, OR	120	PGE Schedule 83S	Roof	1,300,000

Table 3: Bureau of Environmental Services

General Description	Master Site Address	Potential kW DC Production	Power Provider	Mount	Estimated Average Annual Site kWh Usage
CBWTP - Dry Weather Clarifier, Location #1 only	5001 N. Columbia Blvd. Portland, OR	250-700 kW, use 500 kW for bid purposes	PGE Schedule 89P	Ground	> 28 million

Table 4: Bureau of Parks

General Description	Master Site Address	Potential kW DC Production	Power Provider	Moun	Estimated Average Annual Site kWh Usage
Dishman Community Center	77 NE Knott St. Portland, OR	84	Pacific Power Schedule 28	Roof	>800,000
Multnomah Arts Center	7688 SW Capitol Hwy Portland, OR	149	PGE Schedule 83S	Roof	600,000

EXHIBIT F
CITY OF PORTLAND NET PRESENT VALUE
AND PRO FORMA SPREADSHEETS

Information listed below is available at the following FTP site:
<https://ftp01.ci.portland.or.us>

To log in, please enter the following information:
Name: water-solarpower-outgoing
Password: solarpower

Please use all lower case letters.

Energy Trust at Market Electricity Rate Net Present Value Information

City of Portland 20 Year Net Present Value

Pro Forma using Energy Trust Valuation Model

EXHIBIT G
CERTIFICATION STATEMENT

All proposal responses must include this certification statement signed by a duly constituted official legally authorized to bind the applicant to both its proposal and cost schedule.

A. Proposal may be released in total as public information in accordance with the requirement of the laws covering the same. Any proprietary information has been clearly marked.

B. Proposal and cost schedule shall be valid and binding for ninety (90) days following the proposal due date and will become part of the contract that is negotiated with the City.

C. Offeror's Federal Taxpayer Identification number _____.

D. The Offeror certifies that his proposal response has been arrive at independently and has been submitted without collusion designed to limit independent bidding or competition.

Signature Date

Print Name Title

This certification statement must be signed and submitted with the proposal.