

**SOLAR FACILITY LICENSE
AGREEMENT**

by and between

COMMERCIAL SOLAR VENTURES, LLC

and

CITY OF PORTLAND

dated as of

_____, 2008

CONFIDENTIAL

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SOLAR FACILITY LICENSE AGREEMENT

This “Solar Facility License and Energy Services Agreement” (“**Agreement**”) is entered into between Commercial Solar Ventures, LLC an Oregon limited liability company (“**Seller**”) and the City of Portland, a municipal corporation, by and through its Water Bureau (“**Buyer**”). Seller and Buyer (each also referred to as a “**Party**”) enter into this Agreement as of _____, 200__ (“**Effective Date**”). As provided below, Buyer grants to Seller certain access rights to Seller to install, own, operate and maintain the Solar Facility at the City of Portland’s Water Bureau’s Ground Water Pump Station and to sell the electricity generated by the Solar Facility to Buyer for Buyer’s use.

The Parties agree as follows:

ARTICLE I: DEFINITIONS

1.1 Definitions.

The following terms have the meaning set forth below.

“**Annual License Fee**” has the meaning set forth in Section 3.1.

“**Approvals**” means 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**” means 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.

“**Buyer**” means the City of Portland, a municipal corporation, by and through its Water Bureau.

“**Commercial Operation Date**” or “**COD**” will be the third (3rd) day following the Seller’s delivery of notice to the Buyer that the Solar Facility is ready for commercial operation, as is defined in Section 7.1.

“**Early Termination Fee**” means the amount due as liquidated damages to the Seller arising from the Buyer’s default under or early termination of this Agreement, as specified in Section 11.5.

“**Emergency Access**” means any need for immediate access to the Premises by Seller because of a circumstance or situation involving the Solar Facility which creates an imminent risk of damage or injury to any Person or any Person’s property if such risk involves the Solar Facility. (see Exhibit A for details on access procedures).

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

“**Energy Price**” has the meaning set forth in Section 4.1.

“Environmental Attributes” means 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 (i) any benefit accruing from the renewable nature of solar PV-generated energy; (ii) 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)); (iii) 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; (iv) any property rights that may exist with respect to the foregoing attributes, howsoever entitled, (v) displacements of energy generation by fossil-fuel-consuming or GHG-emitting generation resources; and (vi) any reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

“Environmental Incentives” include, but are not limited to, (i) federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Facility; (ii) 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 (iii) grants or subsidies for which the Solar Facility may be eligible. Environmental Incentives do not include Environmental Attributes or Green Tag Reporting Rights.

“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” means a commercially recognized unit representing the value or amounts of Environmental Attributes.

“Green Tag Reporting Rights” means the right of a green tag buyer 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 buyer’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” means the United States of America, the State, and any political subdivision thereof and any agency, department, commission, board, court or instrumentality thereof.

“Hazardous Material” means 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.).

“Law” means 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” means any mortgage, pledge, lien (including mechanics’, labor or materialmen’s liens), charge, security interest, encumbrance or claim of any nature.

“Non-Emergency Access” means any access needed by Seller to the Premises for purposes other than Emergency Access. Non-Emergency Access includes but is not limited to routine maintenance and repairs, site visits, or any need which does not involve imminent risk of damage or injury to any Person or any Person’s property and therefore does not require immediate access to the Premises by Seller. (see Exhibit A for details on procedures)

“Point of Delivery” has the meaning set forth in Exhibit C.

“Premises” has the meaning set forth in Exhibit A.

“Prudent Operating Practice” means 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” means any person or entity that has competent experience in the operation and maintenance of solar photovoltaic systems and is financially capable of performing Seller’s obligations under this Agreement and agrees in writing to assume Seller’s duties and obligations under this Agreement.

“**Removal Bond**” means a bond or other instrument acceptable to Buyer to be used for the payment of costs associated with the removal of the Solar Facility and restoration of the Premises.

“**Renewable Energy Certificate**” or “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**” means the difference, if any, between (1) the cost of Buyer’s purchases of substitute energy at normal tariff rates from the Utility, minus (2) the cost Buyer would otherwise then have paid for an equivalent amount of Energy under this Agreement.

“**Seller**” means Commercial Solar Ventures, LLC an Oregon limited liability company.

“**Site**” has the meaning set forth in Exhibit A.

“**Solar Facility**” means the solar electric, photovoltaic system, associated hardware and equipment and solar thermal components as described in Exhibit A.

“**State**” means the State of Oregon.

“**Term**” has the meaning set forth in Section 2.1.

“**Termination for Convenience**” has the meaning set forth in Section 11.5.

“**Utility**” means Portland General Electric Company.

ARTICLE II: TERM OF AGREEMENT

2.1 Term.

The term of the Agreement (the “Term”) begins on the Effective Date on which this Agreement is executed and terminates upon the earlier of (a) ten (10) years after the Commercial Operation Date, subject to extension as provided in Section 2.2 below, or (b) the date this Agreement is terminated as permitted herein or by operation of law.

2.2 Extensions.

So long as Seller is not in default at the time of renewal, Seller 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 Term shall not be extended unless Seller gives Buyer a written notice of its intent to extend such Term at least one hundred eight (180) days and not more than 12 months before the end of the Term.

ARTICLE III: LICENSE

3.1 Annual License Fee.

Seller shall pay Buyer an annual license fee for the use of the Premises. The Annual License Fee shall increase by three and one-half percent (3.5%) of the License Fee for the previous year.

Annual License Fee: \$10 per kW ($\$10/\text{kW} * 267 \text{ kW} = \$2,670/\text{year}$) designed capacity of the Solar Facility.

3.2 License Fee Payment Schedule.

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.

3.3 License Fee Payments.

Payments of Annual License Fees shall be sent to Buyer at the address specified in Article 10 (Notices) or such other address as Buyer may notify Seller from time to time. Each payment shall be accompanied by a remittance advice from Seller, identifying the amount of License Fee paid for the Agreement. Buyer will invoice Seller for Annual License Fees.

3.4 Interest.

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.

ARTICLE IV: ENERGY PRICE

4.1 Energy Price.

The Energy Price is set forth in Exhibit B to this Agreement. The Energy Price will be the only consideration paid by Buyer for Energy delivered by Seller under this Agreement.

ARTICLE V: SELLER'S RIGHTS, DUTIES AND OBLIGATIONS

5.1 Sale of Energy.

Seller will sell to Buyer and Buyer will purchase from Seller all of the Energy produced by the Solar Facility, as and when the same is produced, at the Energy Price in effect at the time of delivery. Seller will deliver the Energy to the Point of Delivery, also described in Exhibit C,

and Buyer will accept the Energy delivered for the Term.

5.2 Monitoring, Metering and Billing.

Seller will provide all monitoring, metering, billing, invoicing and administrative services necessary to fulfill Seller's duties under this Agreement. Seller will also provide Buyer access to Solar Facility monitoring equipment and energy production data upon Buyer's reasonable request.

5.3 Ownership of Environmental Attributes and Environmental Incentives.

Seller shall have all right, title and interest in and to all Environmental Attributes and Environmental Incentives and other items of whatever nature relating to Environmental Attributes and Environmental Incentives of the Solar Facility, and it is understood that Seller shall transfer all ownership rights of one hundred percent (100%) the Environmental Attributes associated with the Solar Facility to Buyer for the period calculated as beginning at 12:00:00 am (Pacific time zone) on the day after the Commercial Operation Date and running for a time period ending at 11:59:59 pm (Pacific time zone) on the day before the second anniversary of the Commercial Operation Date. During the two (2) years of Buyer's ownership of the Environmental Attributes, Seller will not (i) sell the Solar Facility's Environmental Attributes to any other party, or (ii) assert any claim to the Environmental Attributes or assert any claim that the Solar Facility possesses or is otherwise receiving or using the Environmental Attributes. Buyer may reassign its rights in the Environmental Attributes at any time during its two (2) year period of ownership. During Buyer's period of ownership of the Environmental Attributes, Seller will cooperate fully with Buyer to (i) register or otherwise perfect Buyer's rights in the Environmental Attributes, and (ii) report such rights.

5.4 Seller Is Solar Facility Owner and Operator.

Seller is the sole legal and beneficial owner and the operator of the Solar Facility. The Solar Facility shall remain the personal property of Seller 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.

5.5 Non-Emergency Access and Maintenance Requirements.

(a) Upon Seller's request and proper notice, Seller, its agents, employees, contractors (if any) and subcontractors (if any) shall be permitted reasonable access to Buyer's property for purposes of Non-Emergency Access, which shall include installing, operating, maintaining, repairing, and, if applicable, removing equipment relating to the Solar Facility. Specific details defining Non-Emergency Access, maintenance, and notice procedures are outlined in Exhibit A of this Agreement.

(b) Seller will 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, Seller shall use commercially reasonable efforts to remedy such interruption. Seller will 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. Seller 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 shall be responsible for obtaining annual inspections of the structural integrity of the Solar Facility 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, Seller shall deliver copies of all reports prepared in connection with such inspections to Buyer. The maintenance of the Facility shall be the responsibility of Seller, except for any of Buyer's equipment or buildings, which shall be maintained by Buyer.

5.6 Installation and Maintenance of the Utility Interconnection.

Seller shall comply at Seller'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 E, if any.

5.7 Maintenance of Health and Safety and Emergency Access.

(a) Seller 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.

(b) If Seller becomes aware of any need for Emergency Access relating to the Premises or the Solar Facility which create an imminent risk of damage or injury to any Person or any Person's property, Seller shall immediately follow the procedures outlined in Exhibit A, section 8 ("Emergency Access.").

5.8 Avoidance of Liens.

Seller will not directly or indirectly allow any Lien on or with respect to the Site or any interest therein arising from or relating to the construction, ownership or operation of the Solar Facility by the Seller.

5.9 Payment of Taxes and Assessments.

Seller 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 Seller's ownership of the Solar Facility.

5.10 Seller Obligation to Cure Liens on Site or Against Buyer.

The Seller will hold harmless, defend and indemnify the Buyer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in

discharging and releasing any Lien asserted against the Buyer or the Site as a result of any act or omission by Seller hereunder or with respect to the Solar Facility.

5.11 No Infringement.

The Seller is responsible for ensuring that neither the Solar Facility nor any of Seller's services provided to Buyer pursuant to this Agreement infringes on any third party's intellectual property or other proprietary rights.

5.12 Marketing

In marketing materials describing the Solar Facility, Buyer and Seller will each use reasonable efforts to acknowledge the other, and will also use reasonable efforts to acknowledge Commercial Solar Ventures, Energy Trust of Oregon, Inc, Bonneville Environmental Foundation, and [need to insert tax equity partner's name] 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. Each Party hereby consents to the use of its logo, as depicted in Exhibit F herein, in such promotional materials.

ARTICLE VI: BUYER'S RIGHTS, DUTIES AND OBLIGATIONS

6.1 Purchase Energy.

Buyer agrees to purchase all Energy produced by the Solar Facility at the Energy Price then specified by this Agreement.

6.2 Provide Access to the Premises for Seller's Non-Emergency and Emergency Access Needs.

(a) Subject to Seller's adherence to Non-Emergency Access procedures and notices outlined in Exhibit A, Buyer shall provide or assist Seller in obtaining convenient, reasonable Non-Emergency Access to and from the Solar Facility during normal business hours necessary or appropriate for Seller to perform construction, inspections, maintenance, repairs and the replacement of damaged portions of the Solar Facility. Non-Emergency Access includes, but is not limited to, access for lifting, rigging and material handling equipment required by the Seller.

(b) Buyer shall also provide Emergency Access to Seller within four (4) hours, if possible, of Seller's verbal notice to Buyer's emergency contact specified in Exhibit A. If Buyer is unable to respond to Seller's emergency notice within four (4) hours, Buyer understands that Seller will follow specific procedures for Emergency Access in order to take action to allay the emergency condition. Specific details defining emergency and non-emergency circumstances and access procedures are outlined in Exhibit A of this Agreement.

6.3 Assistance with Interconnection, Permits and Licenses.

At the Seller's sole cost, the Buyer will use commercially reasonable efforts to assist the Seller and cooperate with the Seller, 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 Buyer. Buyer will also deliver to the Seller copies of any necessary Approvals, rebates or other financial incentives, which are in the name or physical control of the Buyer.

6.4 Protect Solar Access.

Buyer 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 Buyer'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. If the Parties cannot agree on an alternative location for the Solar Facility, Seller will be entitled to an Early Termination Fee; provided, that shading that results from actions outside the control of the Buyer shall not give recourse to the remedies provided for in this Section 6.4.

6.5 Maintenance of Premises, Utility Connection and Service Contracts.

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

6.6 Environmental Attributes and Environmental Incentives Belong to the Seller.

Buyer 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 Seller and understands that they will be assigned to Buyer for the first two (2) years after the Commercial Operation Date pursuant to Section 5.3 of this Agreement. Any Environmental Attributes or Environmental Incentive that is initially credited or paid to the Buyer will be assigned by the Buyer to the Seller without delay. At the Seller's expense, the Buyer agrees to cooperate with Seller in any applications for Environmental Attributes or Environmental Incentives; provided, however, that the Buyer is not required to disclose proprietary information in connection with completing such applications. Buyer understands that Seller will assign the Solar Facility's Environmental Attributes to Buyer only during the first two (2) years after the Commercial Operation Date, after which Seller will assign the Environmental Attributes to the Energy Trust of Oregon for the remainder of the Term (including any Extensions) and pursuant to the Photovoltaic Project Agreement attached herein as Exhibit X to this Agreement.

6.7 Notice to Site Lien holders and Release.

Buyer will use reasonable commercial efforts to give effective notice of the Seller'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. If there is any Lien suffered by Buyer against the Site which could reasonably be construed as prospectively attaching to the Solar Facility as a fixture of the Site, Buyer shall use commercially reasonable efforts to obtain a disclaimer or release from such Lien holder. If Buyer is the fee owner of the Site, Buyer 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 Buyer is not the fee owner, Buyer will use commercially reasonable efforts to obtain such consent from such owner.

6.8 Seller Failure to Pay Taxes and Charges.

If Buyer, either directly or as a levy against the Site, is assessed any taxes or fees which Buyer believes are the responsibility of the Seller, the Buyer will immediately give the Seller written notice of such imposition. Seller will cooperate with Buyer in contesting such assessment; provided, however, that the Buyer will promptly pay such taxes to avoid any additional penalties and interest accruing on such assessments. If following such contest it is determined that the amount is properly payable by the Seller, the Seller will reimburse the amount paid to the Buyer.

6.9 Buyer's Taxes, Fees and Charges.

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

6.10 Security, Health and Safety and Buyer's Notice to Seller of Emergency Circumstances.

The Buyer 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 Buyer will maintain the Premises in a structurally sound and safe condition consistent with all Laws. If Buyer becomes aware of any emergency circumstances relating to the Solar Facility which creates an imminent risk of damage or injury to any Person or any Person's property, Buyer will immediately notify by telephone Seller's emergency contact identified in Exhibit A of such threat. . If the threat relates to the Premises and not to the Solar Facility, the Buyer shall promptly take such action as is reasonably necessary or appropriate to prevent such damage or injury.

6.11 Notice of Damage.

The Buyer will promptly notify the Seller of any physical conditions or other

circumstances the Buyer 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.

6.12 Avoidance of Liens on the Solar Facility.

Buyer will not directly or indirectly allow any Lien on or with respect to the Solar Facility. If any lien is filed against the Solar Facility as a result of the acts of Buyer, the Buyer will promptly give the Seller written notice of such Lien and will take such action as is reasonably necessary or appropriate to have the Lien discharged and removed. Buyer will indemnify the Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing such Lien. Buyer shall give Seller notice of any Lien asserted by a third party of which Buyer has knowledge, but Buyer shall not be in any way responsible to discharge or remove any Lien that is not asserted as a result of Buyer's own acts or omissions.

6.13 Temporary Storage Space During Installation or Removal.

The Buyer 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. Buyer will also provide Seller a reasonable area for construction type laydown and staging. The Buyer and Seller will coordinate and cooperate in determining the amount of space required for such purposes. Specific details regarding temporary storage space are outlined in Exhibit A.

6.14 Buyer's Assumption of Seller's Obligations under the Photovoltaic Project Agreement upon Exercise of Purchase Option

If Buyer exercises the purchase option pursuant to section 11.8 of this Agreement, the "Photovoltaic Project Agreement" attached as Exhibit X will survive the termination of this Agreement, and such "Photovoltaic Project Agreement" shall remain as a contractual agreement between the Energy Trust of Oregon and Buyer. Upon exercise of the purchase option, Buyer shall assume all of Seller's obligations under the Photovoltaic Project Agreement.

ARTICLE VII: ACCEPTANCE TESTING, METERING, INVOICING AND PAYMENT

7.1 Solar Facility Acceptance Testing.

The Seller will conduct one or more tests on the Solar Facility during construction to confirm the operation of then installed capacity of the Solar Facility. Commercial operation will begin after: (i) one hundred percent (100%) of the nameplate capacity has been installed; (ii) testing indicates that the Solar Facility is capable of producing Energy at no less than the nameplate capacity; (iii) 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 (iv) the Seller has acquired all permits necessary to authorize the production, sale and delivery of Energy in the intended amounts. If the testing of

the previous sentence §(iii) is performed on a day with relatively low solar radiation, Buyer may request that the test be performed again on a day with more favorable solar conditions. The Buyer may attend the testing session at the Buyer's own cost. The Commercial Operation Date will be the third (3rd) day following the Seller's delivery of notice to the Buyer that the Solar Facility is ready for commercial operation.

7.2 Estimated Annual Production.

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

7.3 Metering of Delivery.

Seller shall measure the amount of Energy supplied to Buyer at the Point of Delivery using a commercially available revenue grade metering system. Such meter shall be installed, repaired, and maintained at Seller's cost. Buyer shall cooperate with Seller to enable Seller to have reasonable access to the meter as needed to inspect, repair and maintain such meter. At Seller's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Seller to remotely read the meter. If Seller elects to install telemetry allowing for remote reading, Buyer 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 Seller breaks a seal, Seller shall notify Buyer as soon as practicable. If only a physical meter at the Point of Delivery is installed, Seller shall read the meter approximately quarterly. If telemetry allowing remote reading is installed, Seller shall provide Buyer a monthly summary of Energy delivery for information purposes only.

7.4 Reserved.

7.5 Invoicing.

The Seller will invoice the Buyer for Energy delivered within ten (10) Business Days after the end of the prior quarterly billing period. Each invoice will 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 Buyer at the Point of Delivery. Such invoice shall include sufficient details so that the Buyer can reasonably confirm the accuracy of the invoice including, among other details, beginning and ending meter readings. Seller shall send invoices to:

City of Portland
Water Bureau
1120 SW 5th Avenue
Attention: Accounting Department, Room 609
Portland, OR 97204

7.6 Payment.

Buyer shall make payment to Seller for Energy at the address specified by Seller in this Energy Services Agreement. Payment shall be made within thirty (30) days following the date the Buyer receives and approves the invoice from the Seller. The invoice must include the City of Portland's Contract Number and Project Title.

7.7 Meter Verification.

Annually, or earlier if the Seller has reason to believe there may be a meter malfunction, the Seller, at its sole cost, will test the meter and provide copies of such tests to the Buyer. The tests shall be conducted by independent third-parties qualified to conduct such tests. The Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

7.8 Books and Records.

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years, and Seller shall grant Buyer reasonable access to those books, records and data at the principal place of business of the Seller. Buyer may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.

7.9 Payment Adjustments; Billing Errors.

Payment adjustments will be made if the Buyer or Seller discovers there have been inaccuracies in invoicing, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of the Buyer, the Buyer's quarterly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of the Seller, the Seller will add the adjustment amount to the Buyer's next quarterly invoice. Adjustments in favor of either Buyer or Seller shall bear interest until settled in full.

ARTICLE VIII: CONDITIONS, CONSTRUCTION AND RESTORATION

8.1 Premises Condition; Acceptance of.

Seller 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 9.16 (Pre-existing Hazardous Materials), Seller accepts the Premises "AS IS," in its then-present physical condition, including its environmental condition and waives, releases and discharges Buyer 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 Seller has or may have. Such "AS IS" acceptance is conditioned upon Buyer'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, of which Buyer has knowledge. Such "AS IS" acceptance shall not be deemed to invalidate any such warranties. Seller agrees, represents and warrants that the matters released herein are not limited to matters which are known, disclosed or foreseeable.

8.2 Construction and Installation

Seller shall provide to Buyer detailed construction drawings and obtain Buyer's approval of such plans prior to beginning construction. Seller shall not begin construction or installation of the Solar Facility until Buyer has issued a Notice to Proceed. Seller shall follow access procedures outlined in Exhibit A during construction of the Solar Facility.

8.3 Structural Requirements.

Seller'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 Buyer's property or improvements. If any such work by Seller adversely affects or damages Buyer's property or improvements, Seller shall reimburse Buyer 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 Seller's facilities or use shall be the sole responsibility of the Seller. Seller shall obtain the approval of a licensed structural engineer for all structural work it performs. Buyer will be provided with a copy of the structural engineer's findings prior to the commencement of construction activities at the Premises.

8.4 Completion of Construction and Construction Defect Warranty upon Exercise of Option.

Seller shall advise Buyer in writing, when construction or installation work at the Premises is completed. Buyer shall then have thirty (30) days to inspect Seller's work and give Seller written notice of any deficiencies affecting the structural integrity or maintenance of the Premises. Seller shall correct any construction and installation deficiencies reported by Buyer within sixty (60) days of Seller's receipt of such written notice. Within thirty (30) days of completion of construction, Seller shall submit to Buyer 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 this section 8.4, Seller remains responsible for any and all construction defects related to the construction or installation of the Solar Facility until exercise of the Buyer's Purchase Option. Upon notice of Buyer's intent to exercise the Purchase Option, Seller will give a one-year warranty against Solar Facility construction defects and such warranty shall begin on the day Buyer notifies Seller of its intent to exercise Purchase Option. This warranty does not include claims arising from normal wear and tear; exposure to unsuitable environmental conditions, including but not limited to damage due to lightning strikes; unauthorized or abnormal use or operation; negligence or accidents; relocation of the Solar

Facility from its original location or alteration of the Solar Facility without prior approval of Seller; and acts of God, such as earthquake, flood or fire.

8.5 Premises Warranties.

Buyer will provide Seller with a copy of any applicable warranties as soon as reasonably possible after construction of the Premises is complete, and before construction or installation of the Solar Facility begins. Seller will use reasonable efforts to ensure that any warranties of which it has had notice are not invalidated or rendered void by Seller's construction or installation or maintenance of the Solar Facility. In the event that Seller's acts or omissions negatively impact any warranties and result in actual damage, Seller agrees to indemnify Buyer for such damage.

8.6 Reserved

8.7 Performance Guarantee.

Prior to commencement of construction of the Solar Facility under this Agreement, Seller shall provide Buyer 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 Buyer, guaranteeing completion of the improvements, payment of Seller's contractors and subcontractors, and performance of Seller's obligations under this Agreement applicable thereto, and protection of Buyer's property from damage arising from the construction, maintenance, repair, operation, or removal of the Solar Facility. Seller shall maintain such performance guarantee in place until the Commercial Operation Date, as defined in Section 7.1.

ARTICLE IX: OPERATIONS AT THE PREMISES

9.1 Reserved

9.2 Reserved

9.3 Buyer's Right to Inspect Solar Facility Construction and Maintenance.

Buyer shall have access at all times to the Premises during the periods when Seller is constructing and installing the Solar Facility and performing work at the Premises, and Buyer 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 visits or inspections, assumes no responsibility for the quality or adequacy or safety of Seller's design, construction and installation.

9.4 Grant of Rights.

Buyer hereby grants Seller 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 Seller herein.

9.5 Limitation on Use.

The Premises may be used by Seller 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. Seller shall, at all times, maintain the Solar Facility and the portion of the Premises utilized by Seller in good condition and repair, reasonable wear and tear excepted, at its sole cost and expense.

9.6 Ownership of Solar Facility.

Subject to Buyer's right to acquire the Solar Facility under this Agreement, the Solar Facility shall be the property of Seller during the Term. All equipment (including, but not limited to, photovoltaic and solar hot water panels, storage tanks, inverters, meters, wire, data monitoring equipment, and cabling) and all moveable property of Seller that is attached to or otherwise brought onto the Premises by Seller shall remain the personal property of Seller and may be removed by it at any time. During the Term, Seller may replace any component of its Solar Facility at Seller's sole cost and expense, in compliance with the provisions of this Agreement.

9.7 Security.

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

9.8 Use by Third Parties.

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

9.9 Approvals.

Seller's right to use the Premises is contingent upon Seller's obtaining all Approvals.

9.10 Compliance with Laws.

Seller's use of the Premises and Seller's operation of the Solar Facility located thereon

shall comply at all times with all Laws. Before commencing operation of the Solar Facility, if reasonably requested by Buyer, Seller and/or its successors and assigns, at their sole expense, shall (a) demonstrate that the Solar Facility and its connections to Buyer's facilities are in full compliance with industry standards and applicable specialty codes; and (b) obtain an inspection and approval from appropriate City of Portland code compliance inspectors.

Seller, at its own cost and expense, shall comply with all Environmental Laws (as defined below) that affect (i) Seller's construction, installation, reconstruction, maintenance, repair, operation or removal of the Solar Facility installed on the Premises covered by this Agreement and (ii) Seller's use and possession of the Premises. Seller 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. Seller shall bear the cost and expense of all necessary applications and Approvals. If Buyer deems it appropriate and consistent with the public interest, Buyer, at Seller's sole cost and expense, shall cooperate with Seller in obtaining required Approvals and in making submissions to appropriate environmental regulatory agencies.

9.11 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 Seller or its representatives, agents, employees, contractors, customers or invitees, Seller shall immediately notify Buyer and, to the extent such release results from the act or omission of Seller, Seller 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, Buyer shall indemnify and compensate Seller for Seller's remediation and any associated costs or harms.

9.12 Action Plan.

If any Premises cleanup or remedial measures are conducted by Seller pursuant to Section 9.11, then Seller shall, at its own cost and expense, prepare and submit to Buyer for Buyer's approval, the necessary and appropriate action plans for such cleanup or remedial measures. Buyer shall have the right to approve, in its sole discretion, any such action plan prepared by Seller before the plan is submitted to any appropriate environmental regulatory agency. Seller shall be solely responsible for completing any action plan as approved by Buyer and the appropriate environmental regulatory agency. Seller, at its own cost and expense, shall promptly provide Buyer with copies of all documentation, reports and studies regarding all of Seller's work and all submissions made to any environmental regulatory agency in connection with Seller's responsibilities pursuant to this Section 9.12.

9.13 Notice of Violation.

Seller shall promptly provide Buyer 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.

9.14 Environmental Inspections.

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

9.15 Hazardous Substances.

Seller 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 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. Seller or any of its officers, employees, agents, contractors, subcontractors, servants, successors, assigns, sub lessees, 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.

9.16 Rights and Obligations Concerning Preexisting Hazardous Materials.

This Agreement is not intended to create a separate obligation on the part of Seller in favor of Buyer to remediate Preexisting Hazardous Materials (as defined in Section 9.17), nor does it limit or expand the rights or defenses of Buyer or Seller with respect to such Preexisting Hazardous Materials. In no event shall Seller be responsible for the cleanup or remediation of any Preexisting Hazardous Materials on the Premises unless (i) Seller's negligence or willful misconduct causes an exacerbation or migration of such Preexisting Hazardous Materials, or (ii) Seller causes additional damage to the Premises in question beyond any damage caused by the presence of such Preexisting Hazardous Materials due to Seller's violation of any applicable Environmental Laws regarding such Preexisting Hazardous Materials. This Section 9.16 shall not relieve Seller 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, Buyer must give notice to Seller of any Pre-existing Hazardous Materials known by Buyer to be located at or near the Premises.

9.17 Environmental Definitions.

As used in this Article 9,

(a) "Environmental Laws" shall mean 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.

(b) “Preexisting Hazardous Materials” shall mean Hazardous Materials or Substances that existed in, on, under or about the Premises or other property of Buyer 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.

9.18 Non-Interference with Operations

(a) 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 Buyer’s or its patrons’ use of the Premises, or with Buyer’s construction or maintenance work or Buyer’s radio or other communications at the Premises, unless prior written approval is granted by Buyer. For purposes of this Subsection 9.18(a), 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.

(b) Buyer 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 Seller under this Agreement.

9.19 Damage to Buyer’s Property.

If any property of Buyer is damaged, destroyed or disturbed by Seller’s activities on the Premises, Seller shall promptly notify Buyer and shall, at Buyer’s option, either repair or replace the affected property at Seller’s expense or shall reimburse Buyer for its reasonable costs of repairing or replacing the affected property

ARTICLE X: NOTICES

10.1 Immediate Notice of Damage to the Solar Facility.

In addition to the Buyer’s duty to immediately notify the Seller if the Buyer becomes aware of a risk or the threat of a risk to Persons or property, the Buyer will promptly notify the Seller by telephone if the Buyer becomes aware of any of the following conditions: (a) damage to the Premises caused by the operation, maintenance or repair of the Solar Facility; (b) damage to the Solar Facility from any cause; or (c) damage to the Premises from a cause other than the Solar Facility. After such notice, Buyer agrees that the Seller 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.

10.2 Addresses for the Delivery of Notices.

Any notice required, permitted, or contemplated in this Agreement, except for emergency notices (see Sections §5.7 and §6.10) shall be in writing, 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. Such notices may also be sent by fax transmission:

To Seller: Commercial Solar Ventures
621 SW Alder St. #300
Portland, Oregon 97205
Attention: Sandra Walden
Fax No.: (503) 241-2204
Phone No.: (503) 241-5918
Email: swalden@ c-s-v.com

With a copy to: Bonneville Environmental Foundation
240 SW 1st Ave
Portland, OR 97204
Attention: Angus Duncan
Fax No.: (503) 248-1908
Phone No.: (503) 248-1905
Email: angusduncan@b-e-f.org

To Buyer: Portland Water Bureau
1120 SW 5th Avenue, Room 600
Portland, OR 97204
Attention: Tom Klutz, Property Manager.
Fax No.: (503) 823-4500
Phone No.: (503) 823-7503
Email: tklutz@water.ci.portland.or.us

With a copy to: Office of the City Attorney
1220 SW 4th Avenue, Room 430
Portland, OR 97204
Attention: Terry Thatcher
Fax No.: (503) 823-3089
Phone No.: (503) 823-4047
Email: tthatcher@ci.portland.or.us

10.3 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.

ARTICLE XI: CHANGES IN CIRCUMSTANCE/TERMINATION

11.1 Substitution of Premises.

If the Buyer ceases to conduct business operations at and/or vacates the Premises or is prevented from operating the Solar Facility on or at the Premises because of a change in the Premises' condition not related to a force majeure event under Article XII, then instead of being required to pay the Early Termination Fee, the Buyer has the option of providing the Seller a mutually agreeable substitute location on which Seller may operate the Solar Facility. In addition to being acceptable to the Seller, the substitute location must be serviced by the same Utility as the Premises or in a location with similar solar characteristics and local utility rates as the Premises. The Buyer will provide at least ninety (90) days' written notice before the date on which it desires Seller to begin removal of the Solar Facility.

11.2 Substitute Agreement.

In connection with any location substitution, the Buyer 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 execution and delivery of the amended agreement will not be deemed a termination of this Agreement for purposes of any Early Termination Fee. The Buyer will provide the Seller any consents or releases from the new Buyer and any owner, lessor, or mortgagee of the substituted location required by the Seller's lender in connection with the location substitution. The Buyer will pay all costs associated with relocation of the Solar Facility including all costs and expenses incurred by or on behalf of the Seller in connection with: (i) removal of the Solar Facility from the existing Premises; (ii) installation and testing of the Solar Facility at the substitute location; (iii) applicable interconnection fees and expenses at the substitute location; (iv) new title search; (v) other out of pocket expenses of the Seller connected to preserving and re-filing the security interest of Seller's lender in the Solar Facility; and (vi) the cost of obtaining replacement warranties, if moving the Solar Facility to a new location causes the original warranties to be voided. If the substitute location has inferior solar characteristics as compared to the original Premises, the Seller has the right to make an adjustment to the Energy Price for the term of the substitute Agreement to maintain the Buyer's annual payments at the same amount as would have been due based upon the solar characteristics of the Premises.

11.3 Termination by Buyer for Seller's Failure to Obtain Third-Party Approvals.

If Seller has not obtained all Approvals within six (6) months after the Effective Date, Buyer may terminate the Agreement if Seller has not obtained such Approvals within 30 days of receipt of notice from Buyer of Buyer's intent to terminate. Seller 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 Seller inadvertently fails to apply for an Approval within such thirty (30) day period, such omission shall not constitute a breach of this Agreement if (i) Seller timely obtains such Approval and (ii) Buyer is not otherwise materially damaged by such inadvertent omission.

11.4 Termination by Seller for Commercial Reasons.

Subject to Seller's obligations under Section 9.10, if at any time before the Commercial Operation Date, it becomes commercially inadvisable or technologically impractical in Seller's reasonable business judgment for Seller to utilize the Premises or if any Approval is denied, canceled or otherwise terminated due to circumstances beyond Seller's reasonable control and, as a result, Seller is unable to use the Premises for its intended purpose, Seller may terminate this Agreement. In such event, Seller shall provide Buyer with a minimum of one hundred twenty (120) days prior written notice of Seller's intent to terminate the Agreement. In the event of such a termination under this Section 11.4, Seller shall, at the time notice of termination is given, pay a termination fee (the "Termination Fee") in an amount calculated as follows:

$$TF = ALF - PRE$$

Where

- TF is the Termination Fee to be calculated hereunder;
- ALF is the Annual License Fee for the Premises, calculated for the 365 days following the Termination Date, being equal to the amount that would have been payable for such period in the absence of the termination; and
- PRE is that portion, if any, of the prepaid annual License Fee for such Premises that is applicable to the period of time on or after the Termination Date.

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 Seller terminates under this Section 11.4, it shall restore the Premises as required under Section 11.9.

11.5 Termination for Convenience.

(a) Buyer may terminate this Agreement if Buyer'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. To the extent practicable, Buyer shall provide Seller with at least three hundred sixty-five (365) days written notice of intent to terminate this Agreement under this Section 11.5. In all events, Buyer shall, before exercising its rights under this Subsection 11.5(a), give Seller reasonable notice of its intent to do so, and an opportunity to be heard by the Portland City Council as to why this Agreement should not be terminated.

(b) Seller's obligation to pay an Annual License Fee for the use of the

Premises shall cease on the termination date specified in Buyer'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, Seller shall pay a pro-rata portion of the Annual License Fee for the partial year ending on such termination date.

(c) Upon Buyer's notice of termination of this Agreement under this Section 11.5 or Seller's Termination under Section 13.4, Buyer shall pay an Early Termination Fee to Seller. The Early Termination Fee is intended solely to repay Seller for all unrecovered actual damages incurred as a result of Buyer's termination for convenience or default, and shall be calculated after consideration of the following:

- (i) the Annual License Fee that has been prepaid for the Premises that is applicable to the period of time on or after the termination date; plus
- (ii) the out-of-pocket capital equipment, construction and other costs and expenses actually incurred in installing the Solar Facility on the Premises, including any developer's fee paid to Commercial Solar Ventures, LLC, minus the depreciated amount of such costs, calculated on a straight-line basis over one hundred twenty (120) months from the Commercial Operation Date until the termination date; plus
- (iii) any penalties or recaptured federal and state tax benefits and associated interest involving the Solar Facility incurred by Seller due to termination of this Agreement; plus
- (iv) any termination fee payable under an O&M agreement, in addition to decommissioning and storage costs; plus
- (v) the amount of the ETO incentive payment under the "Photovoltaic Project Agreement" attached as Exhibit X or any other grant that Seller is required to repay as a result of the termination of this Agreement; plus
- (vi) the cost of dismantling the Solar Facility and removing the Solar Facility to another location for redeployment; and
- (vii) power sale revenues that Seller would have received had this Agreement not been terminated pursuant to this Section 11.5, beginning on the date that this Agreement is terminated and ending one year later, unless Seller is able to redeploy Solar Facility within one year from the date of Termination in which case Buyer need only pay expected power sale revenues from the date of Termination until the date Seller redeploys the Solar Facility.
- (viii) any benefits or funds, including tax credits or depreciation, already received by Seller for costs associated with the project as well as

value received through mitigation efforts, such as redeployment or salvage.

The Early Termination Fee shall not exceed actual lost costs. In the event that the Parties cannot agree on the amount of the Early Termination Fee, an independent auditor shall determine the amount of the Early Termination Fee in accordance with the intent that the Fee is intended to make the Seller whole, but not to unduly penalize the Buyer. For the avoidance of doubt, in any case where a payment is due to Seller under this Section 11.5, such payment shall be in lieu of any other payment to which Seller would otherwise be entitled under this Agreement.

11.6 Reserved.

11.7 Temporary Closure of the Premises.

If Buyer desires or needs to conduct any type of work on the Premises, which will require Seller to cease making deliveries of Energy for more than forty-eight (48) hours, the Buyer's payments shall be adjusted to reflect the Seller's losses of income and additional expenses during the period in which Energy cannot be generated and delivered to the Buyer. The payment adjustment shall be equal to the Seller's lost revenue from Energy sales; Seller's actual costs of making the required roof area available to the Buyer by moving, disassembling, removing, storage, re-assembling, and re-commissioning the Solar Facility, as required; and the Seller's lost income from the sale of Environmental Attributes. The Seller will provide the Buyer with a calculation of the anticipated lost revenues and additional costs to be incurred by the Seller. The Buyer will have twenty (20) calendar days to review the calculation and make, in writing, any objections to the calculation. Absent manifest mathematical error, the calculation shall be binding as to the payment adjustment to be made by the Buyer. The Buyer will make a reasonable commercial effort to give the Seller as much advance notice as possible, but in no event less than thirty (30) calendar days notice, except in an emergency situation where such notice is not reasonable, of the Seller's need to move or relocate the Solar Facility. The Buyer will keep the Seller notified of the anticipated date on which the Seller can start reinstalling the Solar Facility in fully functional form. Once the work is completed and the Solar Facility is fully functional, the Buyer will promptly pay to the Seller the full amount of the adjustment upon being invoiced by the Seller.

11.8 Buyer's Purchase Option.

Beginning one-hundred eighty (180) days after the 5th anniversary of the Commercial Operation Date, Buyer shall have the option to purchase the Solar Facility at fair market value. During the first two (2) years of the purchase option the Buyer may exercise its purchase option by giving the Seller at least sixty (60) calendar days written notice of Buyer's intent to exercise its purchase option, unless Seller agrees in writing to a shorter period. In other words, during the first two (2) years that the purchase option remains open, Buyer must give Seller sixty (60) days prior written notice before Buyer can purchase the Solar Facility. Beginning one-hundred eighty (180) days after the 7th anniversary of the Commercial Operation Date, Buyer agrees to give Seller at least two (2) years written notice of Buyer's intent to exercise its purchase option. In other words, the option shall remain open after that initial two (2) year period, but after that initial two (2) year period, Buyer must give Seller two (2) years prior

written notice before Buyer can purchase the Solar Facility. If the Buyer provides timely notice of its exercise of such option, the Parties shall cooperate and work diligently to close the purchase within, respectively, the 60-day or two-year period. The Parties shall, in good faith, attempt to agree on a fair market price for the Solar Facility, which shall reflect, as nearly as practicable, the fair market value as of the date of transfer of title. If the Parties cannot agree on a value on or before the thirtieth day prior to expiration, respectively, of 60 days or two years following the date of Buyer's notice of its exercise of the option, fair market value shall be determined by an independent energy appraiser mutually acceptable to the Parties. In any case, 'fair market value' shall mean the price that would be established at the time Buyer acquires said solar facility in an arm's-length transaction between an informed and willing buyer and an informed and willing seller for the equipment that comprises the System as installed at the Premises. The Buyer acknowledges that the Seller makes no representation or promise as to the fair market value of the System at any future time. If the Buyer chooses to exercise its purchase option, the Buyer and Seller will promptly execute all documents necessary to (A) pass title to the Solar Facility to the Buyer, free and clear of any Liens (except those Liens which will be paid and removed by the Seller upon receipt of the option price), (B) assign all warranties for the Solar Facility to the Buyer, and (C) assign Seller's obligations under the "Photovoltaic Project Agreement" from the Energy Trust of Oregon ("ETO"), dated _____, 2008 to Buyer and attached as Exhibit X.. Buyer's exercise of this purchase option is subject to Buyer's express agreement to indemnify Seller for amounts required to be repaid to ETO as a result of Buyer's breach of obligations under the Photovoltaic Project Agreement, including any reasonable costs and attorneys' fees, incurred by Seller or the ETO. Prior to transfer of title, Seller shall complete and provide to Buyer an independent performance report, indicating the condition and production abilities of the Solar Facility at that time. If the Solar Facility is not capable of producing approximately 267,000 kWh per year (subject to climate variations and ordinary system degradation) as required in the Photovoltaic Project Agreement attached as Exhibit X, then Seller will make any repairs needed to meet such requirements prior to the transfer of title. If the Solar Facility is not meeting the ETO production requirements, as stated in the Photovoltaic Project Agreement sections 7A, then Seller will make any repairs needed to meet such requirements prior to the transfer of title. The Buyer will pay the option price to the Seller concurrently with the passage of title to the Solar Facility and the expiration of this Agreement.

11.9 Removal At Early Termination or Event of Seller Default.

Unless otherwise provided, if Seller 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 Seller will take care to assure that the removal of the Solar Facility will not affect the integrity of the Buyer's Premises. All of the Buyer's obligations to provide access shall remain in full force and effect until removal is complete. If the Seller fails to remove or commence substantial efforts to remove the Solar Facility within the sixty (60) day period, the Buyer has the right, upon ten (10) days' notice to Seller, to (i) have the Solar Facility removed and stored in a public warehouse at Seller's cost at Seller's cost; provided, however that Buyer may not undertake any improvements or betterments to the condition of the Premises at Seller's cost.

11.10 Removal of Solar Facility at Substitution.

If the Seller and Buyer have agreed upon a substitute location for the Solar Facility

pursuant to Section 11.1 (“Substitution of Premises”), the Seller will remove the Solar Facility from the Premises prior to the termination of the Buyer’s ownership, lease, or rights to use the Premises. The Seller will not be required to restore the Premises to its prior condition but shall promptly pay the Buyer, or Buyer’s designee, for any damage caused by the Seller during removal of the Solar Facility.

ARTICLE XII: FORCE MAJEURE

12.1 No Liability If a Force Majeure Event Occurs.

Neither the Seller nor the Buyer will be liable to the other in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure. 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. The occurrence and continuation of an event of Force Majeure shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

12.2 Notice.

In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of 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.

ARTICLE XIII: DEFAULTS/REMEDIES

13.1 Seller Defaults.

The following events shall be defaults with respect to Seller (each, a “Seller Default”):

- (i) Seller fails to pay any undisputed amounts due Buyer pursuant to this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to the Seller;
- (ii) Seller breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice from Buyer specifying the breach, provided that if such breach cannot, with due diligence, be cured within a period of thirty (30) days, Seller shall not be deemed to be in default if Seller 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;

- (iii) Seller (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 Seller in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against Seller remains undismissed or undischarged for a period of sixty (60) days.

13.2 Buyer's Remedies.

Buyer may terminate this Agreement (i) upon at least fifteen (15) days' prior written notice to Seller if a Seller Default described in Section 13.1(iii) has occurred, or (ii) immediately upon the expiration of the cure period if a Seller Default described in Section 13.1(i) or (ii) has occurred and is continuing. In addition to any other remedy hereunder, Buyer may pursue any other remedy given under this Agreement or existing at law or in equity or otherwise.

13.3 Buyer Defaults.

The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

- (i) Buyer fails to pay any undisputed amounts due Seller pursuant to this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to the Seller;
- (ii) Replace 13.3(ii) with: Buyer breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice from Seller specifying the breach, provided that if such breach cannot, with due diligence, be cured within a period of thirty (30) days, Buyer shall not be deemed to be in default if Buyer 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;
- (iii) Buyer (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 Buyer in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against Buyer remains undismissed or undischarged for a period of sixty (60) days;
- (iv) Buyer refuses to sign authorizations needed to obtain any Environmental Attributes or Environmental Incentives or purposefully breaches any term of the Interconnection Agreement required for interconnection of the Solar Facility, if any – (the Interconnection Agreement is attached as Exhibit E), and
- (v) Buyer terminates the Agreement other than due to Seller's Default Section 13.1 or a Termination for Convenience under Section 11.5.

13.4 Seller's Remedies.

If a Buyer Default described in Section 13.3 (i), (ii) or (iv) has occurred and is continuing, Seller 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, Seller may (i) cease the provision of Energy from the Solar Facility, (ii) remove the Solar Facility from the Premises in compliance with the terms of this Agreement, and (iii) invoice the Buyer for the Early Termination Fee pursuant to Section 11.5, and (iv) pursue any other remedy given under this Agreement or existing at law or in equity or otherwise.

ARTICLE XIV: LIMITATION OF LIABILITY

14.1 LIMITATION OF LIABILITY.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER SELLER NOR BUYER SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, OTHER THAN INDEMNITY OBLIGATIONS WITH RESPECT TO THIRD-PARTY CLAIMS.

ARTICLE XV: INDEMNIFICATION

15.1 Seller's Indemnity to Buyer.

The Seller agrees that it will indemnify, defend and hold harmless the Buyer and the Buyer's permitted successors' and assigns' and their respective subsidiaries, directors, officers, members, shareholders and employees (collectively, the "Seller Indemnified Parties") from and against any and all damages and expenses incurred by the Seller Indemnified Parties arising from or out of the following: (a) the claim against Buyer by any third person that an injury or death, or a loss or damage to property was caused by the Seller, or any agent, subcontractor or component supplier of the Seller relating to the installation or operation of the Solar Facility, or (b) the claim that the Solar Facility infringes on patents or improperly uses proprietary rights. The Seller is excused from any indemnity obligation to the Seller Indemnified Parties and is not required to reimburse or indemnify any Seller Indemnified Party for any claim to the extent such claim is due to the negligence or willful misconduct of any Seller Indemnified Party.

15.2 Buyer's Indemnity to Seller.

To the extent allowed by law and subject to the limitations of the Oregon Tort Claims Act, the Buyer agrees that it will indemnify and hold harmless the Seller and the Seller's permitted successors and assigns and their respective subsidiaries, directors, officers, members, shareholders and employees (collectively, the "Buyer Indemnified Parties") from and against any and all damages and expenses incurred by the Buyer Indemnified Parties arising from or out of a claim against the Seller by any third person that an injury or death, or a loss or damage to

property was caused by the activities or conduct of Buyer at the Premises. The Buyer is excused from any indemnity obligation to the Buyer Indemnified Parties and is not required to reimburse or indemnify any Buyer Indemnified Party for any claim to the extent such claim is due to the negligence or willful misconduct of any Buyer Indemnified Party.

Buyer will indemnify and compensate Seller for the Energy Trust incentive repayment amount if any action by Buyer triggers Seller's obligation to repay of Energy Trust Incentive Funds under the "Photovoltaic Project Agreement," which is attached as Exhibit X.

ARTICLE XVI: ASSIGNMENT

16.1 General Prohibition on Assignments.

Except as provided below, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer will unreasonably withhold condition or delay any requested consent to an assignment which is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

16.2 Change of Control of the Seller.

Seller may assign its interests in this Agreement to a special purpose entity having Bonneville Environmental Foundation as a member without the Buyer's prior written consent. The entity to which Seller wishes to assign its interests must assume in writing all of the Seller's obligations and liabilities under this Agreement in writing prior to such assignment purporting to become effective, and such entity must have the financial capability to perform all of the Seller's obligations under this Agreement.

16.3 Change of Control of Buyer.

Buyer may assign its interests in this Agreement to an affiliate of the Buyer or to any entity which has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without the Seller's prior written consent. The entity to which Buyer wishes to assign its interests must assume in writing all of the Buyer's obligations and liabilities under this Agreement in writing prior to such assignment purporting to become effective, and such entity must have the financial capability to perform all of the Buyer's obligations under this Agreement.

ARTICLE XVII: DISPUTE RESOLUTION

17.1 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law.

17.2 Forum.

Any litigation between the Parties arising under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and, if in the federal courts, in the United States District Court for the District of Oregon.

17.3 Negotiation, Mediation and Arbitration.

Regarding any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this Agreement, an attempt may be made by the Parties to negotiate a solution to such dispute or claim. Following any unsuccessful attempt at negotiation, the Parties may use local mediation services to further attempt resolution of such dispute or claim. If neither negotiation nor mediation is successful, the Parties may attempt to resolve the dispute or claim using local arbitration services. If at all possible, these attempted dispute resolution strategies will be coupled with the Multnomah County Court System in the State of Oregon.

ARTICLE XVIII: INSURANCE

18.1 Required Insurance.

(a) When Required. Before Seller or any of its contractors or subcontractors enters the Premises, and before Seller performs any construction or installation work on the Premises, Seller, its contractors and its subcontractors shall provide, at their own cost and expense, the insurance specified by this Article 18. Said insurance coverage to be provided by Seller shall remain in full force during the Term.

(b) Evidence of Coverage. Seller and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, Portland Water Bureau, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to Buyer at or before execution of this Agreement and then annually for the duration of the Agreement. The adequacy of the insurance shall be subject to the approval of the Water Bureau City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the Buyer.

(c) Notice of Cancellation, Reduction or Material Change in Coverage. The insurance policy shall provide that the insurance shall not terminate or be materially changed without thirty (30) days written notice first being given to Buyer. Notices shall be sent to the:

Portland Water Bureau,
1120 SW 5th Avenue, Room 600,
Attention: Property Manager,
Portland, Oregon, 97204.

If the insurance coverage is canceled, terminated, or reduced prior to the end of the Term, the Seller or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The Seller and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit

(d) Required Coverage.

(i) Seller and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects Seller and Buyer and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Seller's work under this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Seller and its contractor or subcontractors, if any. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence.

(ii) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the Buyer and its officers, agents and employees. Notwithstanding the naming of additional insured, the insurance shall protect each 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 insured on the policy.

(iii) Workers Compensation Insurance. Seller, its contractors or subcontractors, if any, and all employers acting on Seller's behalf that are subject employers under Oregon Workers Compensation Law for this Agreement shall comply with ORS Chapter 656. If such coverage is required, Seller and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with Buyer at all times during the Term.

(iv) "All Risk" Property Insurance for physical loss or damage to personal property owned by Seller including but not limited to equipment, machinery, furniture and fixtures, located at the Premises and used in connection with this Agreement for the mutual benefit of Seller and Buyer.

(A) Such insurance shall include coverage for such perils as are generally insured against for properties of similar character, age and location.

(B) Such insurance shall be maintained on a replacement cost basis in an amount not less than one hundred percent (100%) of the replacement value, and shall include coverage for the cost of demolition of a damaged structure and increased costs of construction arising from or caused by changes in building codes and other laws.

(C) Such insurance shall name Seller as insured and

Buyer as an additional insured.

18.2 Special Provisions.

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

(b) Buyer 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 Seller to an automatic renewal of the Term.

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

18.3 Waiver of Claims.

To the extent permitted by Law and without affecting the coverage provided by insurance required to be maintained hereunder, Buyer and Seller waive any right against the other for (i) damages for injury or death of persons, (ii) damage to property, (iii) damage to the Premises or part thereof, or (iv) claims arising by reason of any of the foregoing, to the amount and extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance carried hereunder by Buyer or Seller, respectively. This provision is intended to restrict each Party (as permitted by Law) to recovery against such Party's insurance to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims that might give rise to the right of subrogation. Each Party reserve the right to recover against the other Party for any deductibles a Party may be required to pay under its insurance policy. However, if Seller must reimburse Buyer for Buyer's deductible, Buyer agrees that Seller shall have to repay no more than \$100,000 of Buyer's total deductible.

18.4 Compliance with Policies.

Seller shall observe and comply with the requirements of all policies of public liability, property and other policies of insurance at any time in force with respect to the Premises so long as Seller is given prior notice of such policies, and Seller shall so perform and satisfy the requirement of the companies writing such policies so that, at all times, companies of good-standing satisfactory to Buyer shall be willing to write or continue such insurance. Seller shall, in the event of any violations or attempted violations of the provisions of this section by any other user of any portion of the Premises, take steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same, as the case may be.

ARTICLE XIX: CONFIDENTIAL INFORMATION

The parties recognize that Buyer is subject to the Public Record Act of Oregon, ORS 192.410 et seq, and, with limited exceptions, documents created or held by Buyer are public records open to inspection and subject to disclosure upon public request. If Seller wishes Buyer to maintain confidentiality of any documents, Seller will identify specific documents for which it seeks confidential treatment and specify the public records exemption it believes allows Buyer to decline to disclose the document to the public.

The Buyer has the obligation to make an independent decision on the applicability of any disclosure exemption to any document identified by Seller as confidential. If a request to inspect any document Seller identifies as confidential is received by the Buyer, it shall notify Seller of that request. If the Buyer declines to disclose the document to the requestor and the requestor appeals to the District Attorney of Multnomah County (or such other official as has authority to review the decision), Seller shall provide to Buyer sufficient information to justify the non-disclosure decision. If the District Attorney (or other responsible official) orders the documents disclosed, the Buyer will notify the Seller in order that Seller may take such legal action as it deems appropriate.

Seller agrees to hold harmless, defend and indemnify the Buyer for all costs, expenses and attorney fees that may be incurred by or imposed as the result of the Buyer's decision to decline to disclose any document identified by Seller as confidential, including costs, expenses, and attorney fees associated with any appeal of a public records decision by the District Attorney (or other responsible official)), except that Seller shall have no liability whatsoever under this Section if Seller does not object to release of a document identified as confidential following notice from Buyer that such document has been requested.

ARTICLE XX: MISCELLANEOUS

20.1 Entire Agreement; Integration; Exhibits.

This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement and understanding between the Seller and the Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference.

20.2 Amendments.

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of the Seller and the Buyer.

20.3 Industry Standards.

Except where a higher standard may be expressly required by the terms of this Agreement, for the purpose of this 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.

20.4 No Partnership or Joint Venture.

Seller, and the agents and employees of Seller, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Buyer. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. 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.

20.6 Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.7 Facsimile Delivery.

This Agreement 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 Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

SELLER: Commercial Solar Ventures

By:
Name: Sandra Walden
Title: Director

BUYER:

By: _____
Name: _____
Title: _____

EXHIBIT A: SOLAR FACILITY DESCRIPTION

The Solar Facility will consist of an approximately 267 kilowatt photovoltaic solar power system with an associated six panel thermal hot water system located on the newly constructed building (“Premises”) located at 16400 NE Airport Way, Portland, Oregon, 97230 (the “Site”), which is owned by the City of Portland, through its Water Bureau (“Buyer”).

1. **Site Name:** City of Portland Water Bureau
Groundwater Pump Station (GWPS)
2. **Site Address:** 16400 NE Airport Way, Portland, Oregon, 97230
3. **Site Legal Description:**
City of Portland Water Bureau, Groundwater Pump Station, 16400 NE Airport Way, Portland, Oregon, 97230

Premises: Premises means all unpaved or unimproved portions of the property east of the groundwater pump station buildings located within the Site fencing in which the Solar Facility lies. (see also §9.7)

Solar Facility: means the Solar Facility located on the Premises. Please see this Exhibit A Section 6.

4. **Buyer emergency contact:**

Portland Water Bureau – Security – (503) 823-6084

5. **Seller emergency contact:**

CSV contact: Sandra Walden – 503-241-5918

GWPS, LLC contact (if Agreement has been assigned to GWPS, LLC):
Bonneville Environmental Foundation - Main line: (503) 248-1905
Main contacts: Bryce Smith or Angus Duncan

6. **Solar Facility System Specifications and Description:**

The 267 kW Photovoltaic ground mounted system will be installed on 5 ft by 12 inch Chance Hubbell steel augers, with a UniRac U-LA supplied top structure. The solar panels, Evergreen 180 or equivalent, will be mounted in columns of 4, portrait mount, at a 20 degree tilt angle. The system consists of approximately 1900 linear feet of racking set up in 300 foot lengths on the areas shown in the diagram.

The system will use 2 ea 100 Kw PV Powered inverters mounted on a concrete pad next to the large array, and a single 30 kW inverter located at the array on the north fence.

The PGE meter will be installed near the inverters. The various meters owned by the Water Bureau at this location will be aggregated.

7. Authorized Personnel

Before accessing the Site, Employees of the Sellers or its contractors or vendors shall complete the following City of Portland Bureau of Water Works forms: the “Facility Security Access Form – Contractor/Vendor/Cell Site” (section 15 herein) and the associated “Employees To Be Onsite” form (section 16 herein). These forms are to be completed and provided to Buyer (see Buyer’s contact information in Section 10.2 to the Site License Agreement) at least 48 hours prior to the first requested access. Lists of authorized personnel for operations or construction may be maintained as described herein.

Seller’s employees shall, at all times they are on the Property, carry valid photo identification and be prepared to provide this identification to Buyer’s agents or employees on request. Buyer may require Seller to provide any necessary background information on Seller’s employees, contractors or vendors that are on the Premises to satisfy Buyer’s Site security concerns.

If it is necessary for the Seller to change authorized personnel, the Seller shall submit a City of Portland Bureau of Water Works “Facility Security Access Form – Contractor/Vendor/Cell Site” (section 15 herein) and associated “Employees To Be Onsite” form (section 16 herein) at least 48 hours prior to the first requested access by the new personnel.

Emergency and Non-Emergency Access: Seller shall maintain a list, of up to 10 people, who are authorized to access the Solar Facility. Personnel on this list shall be granted Emergency or Non-Emergency Access as outlined in this Exhibit A, section 8.

Construction Access: Seller and its contractors or vendors shall complete a City of Portland Bureau of Water Works “Facility Security Access Form - Contractor/Vendor/Cell Site” (section 15 herein) and associated “Employees To Be Onsite” form at least 48 hours prior to the start of construction. A list including Seller, its contractors’ and vendors’ personnel shall be kept up to date during the course of construction. Two members of the Seller’s construction personnel may be identified for card access to the Site that will provide ingress and egress capability for construction personnel. These cards can not be transferred to others without Buyer’s knowledge and personnel allowed access to the Site shall have been approved, as described in this Exhibit A, prior to being allowed in to the site.

8. Seller’s Emergency and Non-Emergency Access Needs and Security Procedures: (see §§ 5.5, 5.7)

Seller's Activities Subject to Groundwater Pump Station Operations:

When the Water Bureau Groundwater Pump Station is in operation, the Seller shall be aware that access may be limited or restricted due to activities at the Site or due to elevated security concerns. Deliveries related to operations of the Buyer may require adjustment of the use of the Premises on a temporary basis and will be coordinated in advance with the Seller. Notification requirements may be adjusted to accommodate Pump Station facility operations.

"Non-Emergency Access" means any access needed by Seller to the Premises for purposes other than Emergency Access. Non-Emergency Access includes but is not limited to routine maintenance and repairs, site visits, or any need which does not involve imminent risk of damage or injury to any Person or any Person's property and therefore does not require immediate access to the Premises by Seller.

Notice for Non-Emergency Access: Seller shall give at least twenty-four (24) hours prior written notice need for non-emergency access to Buyer's contact in Section 4 of this Exhibit A. Request shall include the date and time access is needed and the personnel that will enter the site.

Procedures and Routes for Non-Emergency Access: Access to the site shall be through the primary entrance to the site off of NE Airport Way. Water Bureau security can provide ingress and egress support for authorized personnel.

Limitations on Seller's Non-Emergency Access: Seller shall, at all times, observe and abide by Buyer's access rules and regulations. An employee of Buyer may be present at all times that Seller's employees, agents, contractors and subcontractors are on Buyer's property.

"Emergency Access" means any need for immediate access to the Premises by Seller because of a circumstance or situation involving the Solar Facility which creates an imminent risk of damage or injury to any Person or any Person's property if such risk involves the Solar Facility.

Notice for Emergency Access: Seller shall contact by telephone Buyer's Emergency contact specified in section 4 of this Exhibit A. Within four (4) hours of such notice, if Buyer has not responded to the request for Emergency Access, Seller may access the Premises according to the procedures and limitations outlined directly below. Seller shall follow the same Emergency Access procedures upon Buyer's notification to Seller of an emergency condition.

Procedures and Routes for Emergency Access: Access to the site shall be through the primary entrance to the site off of NE Airport Way. Water Bureau security can provide ingress and egress support for authorized personnel.

Limitations on Seller's Remedial Actions during Non-Emergency Access: If Buyer has not responded to Seller's Emergency notice within four (4) hours of such notice, Seller may take prompt action to remedy the emergency. Such action by Seller may include disconnecting and removing all or a portion of the Solar Facility, or suspending the supply of Energy to the Buyer. If the Solar Facility is to be removed, the Seller 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 11.9 of the Site License Agreement. If the cause of the threat relates to the Solar Facility itself, such remedial action will be at Seller's sole cost and expense. If the cause of the threat is unrelated to the Solar Facility, such reasonable remedial action will be at Buyer's sole cost and expense.

9. Procedures for Access during Solar Facility Construction (see §8.2).

The Seller shall identify authorized personnel who shall have access to the site during the course of construction as identified in Section 7 of this Exhibit A. The Seller shall provide the Buyer with written notification of intended activities and personnel on site, either by providing a schedule of known activities and permanent employees, or, in the event of unscheduled activities or the presence of other than permanent employees, by verbal communication prior to said activity or presence.

Seller's employees shall, at all times they are on the Property, carry valid photo identification and be prepared to provide this identification to Buyer's agents or employees on request. Buyer may require Seller to provide any necessary background information on Seller's employees, contractors or vendors that are on the Premises to satisfy Buyer's Site security concerns.

10. Temporary Storage Space and Parking (see §6.13)

Temporary storage space and parking shall be incorporated in the Premises. Seller shall provide details of temporary storage and parking areas and needs for review by the Buyer. If temporary storage and parking can not be accommodated on the Premises the Buyer will review requests for additional temporary space and will make commercially reasonable efforts to provide sufficient space.

11. **Portland Water Bureau Public Site Visit Request Procedure**

Portland Water Bureau Public Site Visit Request Procedure

The Portland Water Bureau provides limited public site visits at Bureau facilities. All site visits must be requested and coordinated through a Water Bureau sponsor or in the case of VIP's, international visitors or the media, the Public Information Officer.

Approval must be obtained a minimum of 48 hours (two working days) prior to the requested visit date. The following procedure should be followed to request a site visit at a Bureau facility:

For visits to any Water Bureau facility:

1. Provide the name of the group, address and contact phone number of the group or group representative, the name of the facility for which the visit is being requested along with the date and time of the visit utilizing to the Water Bureau's Security Section by completing a *Facility Security Access Form-Visitor* and a *Group Visitor Identification Form*.

For High Security Facilities only:

VIP's, international visitors and members of the media must Contact the Public Information Officer (Jimmy Brown) at (503) 823-3028. All other visitors are to Site visits may also be make arrangements through a designated Water Bureau sponsor, who, when deemed necessary, will communicate with the Public Information Officer, and Security Dispatch at (503) 823-6084.

At the time of the visit, all attendees will be asked to:

1. Provide first and last name, address, and phone number to the sponsor or Bureau guide. Adult visitors will be asked to show the sponsor or Bureau guide valid photo identification.
2. Remain under constant supervision during the visit.
3. Secure all doors to facilities upon entry and exit.
4. Remain in or at facilities for only the time designated in the visit request.

12. Facility Security Access Form-Visitor Information & Instructions

FACILITY SECURITY ACCESS FORM-VISITOR INFORMATION & INSTRUCTIONS

- To request access to Water Bureau sites/facilities, contact an authorized Water Bureau sponsor.
- NOTE: For access to "High Security Facilities," all individuals will be asked to provide full name, address and phone number to the sponsor. Additionally, adults will be asked to show valid photo identification.
- Check the appropriate box (Individual or Group) and indicate number of persons requesting access to the site/facility.

SECTION 1 – VISITOR INFORMATION

- Check the appropriate box (*Individual or Group*) and indicate the number of attendees.
- Enter the name, address and contact information of the individual requesting access or, if a group request, the name of the group representative.
- For group access, complete and attach a "*City of Portland Bureau of Water Works Group Visitor Identification Information*" form.

(A) SECTION 2 – FACILITY INFORMATION

- Enter the name and address (if available) of the facility or location to be accessed.
- Enter the date of the requested access and the times of anticipated arrival and departure.
- Describe the reason for requesting access.
- Describe any special equipment or training needed for making access.
- Enter the name of the Water Bureau member participating in the access.
- Describe any additional information as deemed necessary.

(B) SECTION 3 – WATER BUREAU EMPLOYEE SPONSOR INFORMATION

- Enter the name and contact information of the Water Bureau employee sponsoring the access.
- Enter the date the request was forwarded to the Water Bureau Security Section. (*Fax 823-6078*)

(C) SECTION 4 – WATER BUREAU SECURITY SECTION USE ONLY

- Enter the name of the Water Bureau Security Section person reviewing the access.
- Enter the date and time the access was reviewed.
- Enter the name and date, if appropriate, that the *facility/site manager or supervisor* of the location to be accessed was notified.
- Enter the name and date *Water Control Center* personnel were notified.
- If the Bull Run Watershed is to be accessed, enter the name and date *Headwork's* personnel were notified.
- Other notifications as appropriate:

13. City of Portland Bureau of Water Works Facility Security Access Form - Visitor

CITY OF PORTLAND BUREAU OF WATER WORKS FACILITY SECURITY ACCESS FORM - VISITOR

INDIVIDUAL

GROUP _____ NUMBER OF ATTENDEES _____

FOR GROUP ONLY: Complete and submit a GROUP VISITOR IDENTIFICATION INFORMATION form also.

(D) SECTION 1 - VISITOR INFORMATION		
Name of Person or Group Representative:		
Company / Group / Agency:		
Address:		
City:	State:	Zip:
Phone #:	Cell Phone #:	

SECTION 2 - FACILITY INFORMATION		
Facility / Location to be visited:		
Address (if available):		
Date of visit:	Estimated time of arrival:	Estimated time of departure:
Reason for Visit:		
Special equipment or training needed:		
Name of Water Bureau staff escort:		
Notes:		

SECTION 3 - WATER BUREAU EMPLOYEE SPONSOR INFORMATION	
Print Name:	Title & Section:
Authorized By (Signature):	Phone #:
Date request forwarded to Water Bureau Security:	
Name of Water Bureau Security staff contacted:	

SECTION 4 - WATER BUREAU SECURITY USE ONLY	
Access reviewed by (print name):	Title:
Signature:	Phone #:
Date:	Time:
Interstate or Portland Building receptionist notified:	Date:
Facility manager or supervisor notified:	Date:
Water Control Center Operator notified:	Date:
Headworks Operator notified (For Bull Run Access):	Date:
Other notifications as appropriate:	Date:

Revised: 07/01/05

**15. City of Portland Bureau of Water Works Facility Security Access Form –
Contractor/Vendor/Cell Site**

**CITY OF PORTLAND BUREAU OF WATER WORKS
FACILITY SECURITY ACCESS FORM -
CONTRACTOR / VENDOR / CELL SITE**

Complete an “Employees To Be On Site” Form (Exhibit A, §16 below)

CONTRACTOR USE ONLY			
Name of Company:			
Company Address:			Suite:
City:	State:	Zip:	
Company Phone #:		Fax #:	
Portland Business License #:			
Site / Facility To Be Accessed:			
Site Address:			
Date(s) of Work:			
Work To Be Performed:			
Authorized Signature:			Date:
City Contact Arranging For The Contract:			Phone #:

CITY OF PORTLAND SPONSOR USE ONLY	
Print Name & Title:	Phone #:
Sponsor Approval Date:	

WATER BUREAU SECURITY USE ONLY			
Access reviewed by (print name):			Title:
Signature:		Phone #:	
Date:	Time:		
Interstate or Portland Building receptionist notified:			Date:
Facility manager or supervisor notified:			Date:
Water Control Center Operator notified:			Date:
Headworks Operator notified (For Bull Run Access):			Date:

Revised: 07/01/05

**CELL SITE PERSONNEL MUST CALL THE SECURITY DISPATCH AT
(503) 823-6084 PRIOR TO ENTERING AND UPON EXITING A SITE.**

16. City of Portland Bureau of Water Works – Contractor/Vendor/Cell Site

**CITY OF PORTLAND BUREAU OF WATER WORKS
CONTRACTOR / VENDOR / CELL SITE
EMPLOYEES TO BE ON SITE Form**

No.	Last	First	M. I.	Contact Phone #
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

EXHIBIT B: ENERGY PRICE AND ANNUAL PRODUCTION FORECAST

Energy Price.

The Energy Price will be \$0.08 per kWh with an annual increase of 3 %.

Annual Production Forecast:

Year:	Production forecast in MW/h
1	267.7
2	265.1
3	262.4
4	259.7
5	257.0
6	254.4
7	251.7
8	249.0
9	246.3
10	243.6
11	241.0
12	238.3
13	235.6
14	232.9
15	230.3
16	227.6
17	224.9
18	222.2
19	219.6
20	216.9

EXHIBIT C: POINT OF DELIVERY

The Seller will have a metering pole which will be located next to the solar array and associated equipment. Other electrical meters at the Water Bureau Site will be aggregated so that the point of delivery occurs at the Portland General Electric meter which is to be installed at the Site.

EXHIBIT D: Reserved

EXHIBIT E: COPY OF INTERCONNECTION APPLICATION

**Agreement for Net Metering and Interconnection Services
(Level 1, 2 and 3 Interconnection)**

This Agreement for Net Metering and Interconnection Services (“Agreement”) is made and entered into this ___(date)___ day of ___(month, year)___ by and between _____(print name)_____, an individual company, (“Applicant”) and Portland General Electric Company, a corporation organized and existing under the laws of the State of Oregon (“PGE”). The Applicant and PGE each may be referred to as a “Party,” or collective as the “Parties.”

RECITALS:

WHEREAS, the Applicant is proposing to develop a Net Metering Facility, or a generation capacity addition to an existing Net Metering Facility, at _____ (street address) _____, _____(city)_____, Oregon _____(zip code)___ (“Net Metering Facility”) with a generation capacity of _____. kW, consistent with the Application for Net Metering Facility Interconnection completed on _____(mm/dd/yyyy)_____; and

WHEREAS, the Applicant desires to interconnect the Net Metering Facility with PGE’s Electric Distribution System and take Net Metering service in accordance with PGE’s Tariff Schedule 203 or such successor or replacement schedule(s) (“Tariff”) as approved by the Oregon Public Utility Commission (“Commission”); and

WHEREAS, the Agreement shall be used for all approved Level 1, 2 or 3 Applications for Net Metering Facility Interconnection according to the procedures set forth in Commission Rules, Oregon Administrative Rules (“OAR”) Chapter 860, Division 39 (“Net Metering Rules” or “Rules”). Terms with initial capitalization, when used in this Agreement, shall have the meanings set forth in this Agreement or as given in the Rules and, to the extent this Agreement conflicts with the Rules, the Rules shall take precedence.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Interconnection Service

The Agreement establishes standard terms and conditions approved by the Commission under which the Net Metering Facility with a generation capacity of up to 2 MW will interconnect to PGE’s Electric Distribution System.

1.2 Net Metering Service

Net Metering service is provided by PGE to Applicant pursuant to the Tariff, Rules and Oregon Revised Statute 757.300. Applicant hereby agrees to take Net Metering service from PGE in accordance therewith.

1.3 Other Agreements

Nothing in this Agreement is intended to affect any other agreement between PGE and the Applicant or another interconnection customer. However, in the event that the provisions of this Agreement are in conflict with the provisions of the Tariff, the Tariff shall control.

1.4 Responsibilities of the Parties

- 1.4.1 The Parties shall perform all obligations of this Agreement in accordance with the Rules, all other applicable laws and in accordance with Good Utility Practice.
- 1.4.2 The Applicant will construct, own, operate and maintain its Net Metering Facility in accordance with this Agreement, IEEE Standards, the National Electrical Code and any other applicable standards required by the Commission.
- 1.4.3 If required by the Rules, the Applicant will install and maintain, at its own cost, a lockable manual load break disconnect switch that will disconnect the Net Metering Facility from PGE's Electric Distribution System. The switch must plainly indicate whether it is in the open or closed position and be located within ten (10) feet of PGE's meter. Notwithstanding the foregoing, the disconnect switch may be located more than ten (10) feet from PGE's meter provided Applicant obtains PGE approval of the location of the switch, and permanent instructions are posted at the meter indicating the location of the switch.
- 1.4.4 Each Party shall be responsible, at its own expense, for the safe installation, operation, maintenance, repair and condition of their respective facilities on their respective sides of the Point of Common Coupling.

Article 2. Inspection, Testing, Authorization

2.1 Equipment Testing and Inspection

The Applicant will self test and inspect its Net Metering Facility prior to operation in accordance with IEEE Standards. PGE may also require an inspection and witness of commissioning tests as set forth in IEEE Standards prior to operation in accordance with the Rules.

2.2 Maintenance and Testing Records

The Applicant shall retain written records for seven (7) years documenting any

maintenance and results of testing.

Article 3. Effective Date, Term, Termination and Disconnection

3.1. Effective Date

The Agreement shall become effective upon execution by the Parties (“Effective Date”).

3.2 Term of Agreement

The Agreement will become effective on the Effective Date and will remain in effect unless terminated earlier in accordance with provisions of this Agreement.

3.3 Termination

No termination of the Agreement will become effective until the Parties have complied with all clauses of this Agreement applicable to such termination.

3.3.1 The Applicant may terminate this Agreement at any time by giving PGE twenty (20) business days written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to Article 5 of this Agreement.

3.3.3 The Commission may order termination of this Agreement.

3.3.4 Upon termination of this Agreement, the Net Metering Facility will be disconnected from PGE’s Electric Distribution System at the Applicant’s expense. The termination of this Agreement will not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.5 The provisions of this Article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

PGE or Applicant may temporarily disconnect the Net Metering Facility from PGE’s Electric Distribution System for so long as reasonably necessary in the event one or more of the following conditions or events occur:

3.4.1 Under emergency conditions, PGE or the Applicant may immediately disconnect the Net Metering Facility. PGE shall promptly notify the Applicant when it becomes aware of an emergency condition that may reasonably be expected to affect the Net Metering Facility’s operation. The Applicant will promptly notify PGE when it becomes aware of an emergency condition that may reasonably be expected to affect PGE’s Electric Distribution System. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties’

facilities and operations, its anticipated duration, and the necessary corrective action.

- 3.4.2 For maintenance, repair or construction of the Net Metering Facility or Electric Distribution System, PGE or the Applicant may disconnect the Net Metering Facility. Parties will make reasonable efforts to provide five (5) business days' notice to the other Party prior to such interruption and shall use reasonable efforts to coordinate such interruption.
- 3.4.3 If PGE determines that operation of the Net Metering Facility will likely cause disruption or deterioration of service to other customers served from the Electric Distribution System, or if operating the Net Metering Facility could cause damage to PGE's Electric Distribution System, then PGE may disconnect the Net Metering Facility. In such event, PGE shall provide the Applicant supporting documentation used to reach the decision to disconnect the facility upon the Applicant's request.
- 3.4.4 If the Applicant makes any change to the Net Metering Facility, other than minor equipment modifications, without prior written authorization of PGE, PGE will have the right to temporarily disconnect the Net Metering Facility.
- 3.4.5 The Parties shall cooperate with each other to restore the Net Metering Facility and PGE's Electric Distribution System to their normal operating state as soon as reasonably practicable following any disconnection pursuant to this section.

Article 4. Cost Responsibility and Billing

PGE shall charge for, and the Applicant will be responsible for, the timely payment of the cost of any application fee and the costs of such facilities, equipment, modifications, upgrades and additional review, as may be allowed by the Rules.

4.1 Minor Modifications

Insubstantial modifications to the existing Electric Distribution System identified by PGE under a Level 2 or Level 3 interconnection, including but not limited to changing meters, fuses or relay settings, are deemed "Minor Modifications" and are listed in Attachment A with a non-binding, good faith estimate of their cost. It is in PGE's sole discretion to decide what constitutes a Minor Modification. The Applicant will bear the costs of making such Minor Modifications as may be necessary for the interconnection.

4.2 Substantial Modifications

For Level 3 interconnections, PGE has identified any “Substantial Modifications” to the Electric Distribution System in Attachment A. Attachment A includes those facilities and conditions (as may be identified by a facilities study if done) necessary for the Net Metering Facility to safely interconnect with PGE’s Electric Distribution System, and shall include a non-binding good faith estimate of the cost of those facilities and the estimated time required to build and install them. The Applicant shall be responsible for the actual installed costs of such facilities.

4.3 Billings

Progress billing and final billing and payment schedules for any costs under this Article shall be agreed to by the Parties prior to commencing work. For Level 3 interconnections, PGE may require a deposit of not more than 50% of the estimated cost of the facilities identified in Attachment A.

Article 5. Assignment, Liability, Indemnity, Consequential Damages and Default

5.1 Assignment

This Agreement may be assigned by either Party upon fifteen (15) business days’ prior written notice, in accordance with the following:

- 5.1.1 Either Party may assign this Agreement, without the consent of the other Party, to any affiliate (which shall include a merger of the Party with another entity) of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;
- 5.1.2 The Applicant shall have the right to assign the Agreement, without the consent of PGE, for collateral security purposes to aid in providing financing for the Net Metering Facility. For Net Metering Facilities that are integrated into a building facility, the sale of the building or property will result in an automatic transfer of this Agreement to the new owner, who shall be responsible for complying with the terms and conditions of this Agreement.
- 5.1.3 Any attempted assignment that violates this Article is void and ineffective. An assignment hereunder shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same obligations as the Applicant, including any requirements for Net Metering Service as provided under the Tariff, Rules and Oregon Revised Statute 757.300.

5.2 Limitation of Liability

PGE shall not be liable, directly or indirectly, for permitting or continuing to allow an attachment of the Net Metering Facility to its Electric Distribution System, or for the acts or omissions of Applicant that cause loss or injury, including death, to any third party.

5.3 Indemnity

[Applicable only to governmental entities: To the extent allowed by law and subject to the limitations of the Oregon Tort Claims Act, the] Applicant agrees that it will indemnify, defend and hold harmless PGE from and against any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorneys' fees at trial and on appeal, and all other obligations by or to third parties, arising out of or resulting from Applicant's actions or omissions in performing under or implementing this Agreement.

PGE agrees that it will indemnify, defend and hold harmless the Applicant *[Applicable only to governmental entities:* to the same extent and in the amounts by which Applicant's liability would be similarly limited by the Oregon Tort Claims Act,] from and against any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorneys' fees at trial and on appeal, and all other obligations by or to third parties, arising out of or resulting from PGE's negligent or willful actions or omissions in performing under or implementing this Agreement.

5.4 Consequential Damages

Neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any indirect, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract or in tort, including negligence, strict liability, or any other theory of liability.

5.5 Default

5.5.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of an act or omission of the other Party. Upon a default, the non-defaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Section 5.5.1, the defaulting Party shall have sixty (60) calendar days from receipt of the default notice within which to cure such default; provided, however, if such default is not capable of cure within sixty (60) calendar days, the defaulting Party shall commence such cure within twenty (20) calendar days after notice and continuously and diligently complete such care within six (6) months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.

5.5.2 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further

obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. Alternatively, the non-defaulting Party shall have the right to seek dispute resolution with the Commission in lieu of default. The provisions of this Article will survive termination of the Agreement.

Article 6. Miscellaneous

6.1 Governing Law, Regulatory Authority and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Oregon. This Agreement is subject to all applicable laws. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders or regulations of a governmental authority.

6.2 Amendment

Additions, deletions or changes to the terms and conditions of this Agreement will not be permitted unless they are mutually agreed to by the Parties or, if required by the Rules, or by the Commission for good cause shown. The Parties may amend this Agreement by a written instrument duly executed by both Parties in accordance with provisions of the Rules and applicable Commission Orders and provisions of the laws of the State of Oregon.

6.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

6.4 Waiver

- 6.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.
- 6.4.2 The Parties may also agree to mutually waive a section of this Agreement without the Commission's permission where the section of the Agreement expressly so provides.
- 6.4.3 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right or duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

6.5 Entire Agreement

This Agreement, including any Attachment, constitutes the entire Agreement

between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties or covenants that constitute any part of the consideration for, or any condition to, either Party's obligations under this Agreement.

6.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

6.7 No Partnership

This Agreement will not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for or act on behalf of, or act as or be an agent or representative of, or to otherwise bind, the other Party.

6.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

6.9 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor, or designating a third party agent as one responsible for a specific obligation or act required in this Agreement (collectively "Subcontractors"), as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party will require its Subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and, subject to the application provisions of this Agreement, each Party will remain primarily liable to the other Party for the performance of such Subcontractor.

Article 7. Notices and Records

7.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request or communication required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered via e-mail (if provided in this section 7.1 by the Applicant) or sent by first class United States mail, postage prepaid, to the person specified below:

For Communication to the Applicant:

Applicant Name: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____
E-mail: _____

For Communication to PGE:

Attention: Bruce Barney, Net Metering Coord.
Address: PGE, 121 SW Salmon, 3WTC-0407
City: Portland
State: OR
Zip: 97204
Phone: 503-464-7812
Fax: 503-464-2284
E-mail: bruce.barney@pgn.com

Notice shall be deemed delivered on the day an e-mail is sent (if an email address is provided for Notice purposes) or Notice is deposited in First Class U.S. mail. The Applicant shall be responsible for informing PGE of any changes to its notification address as soon as reasonably possible.

7.2 Records

The utility will maintain a record of all Interconnection Agreements and related attachments for as long as the interconnection is in place. The utility will provide a copy of these records to the Applicant or Interconnection Customer within fifteen (15) Business Days if a request is made in writing.

7.3 Billing and Payment

Billings and payments shall be sent to the addresses set out above unless alternative billing addresses and contact information are provided to the other Party in writing.

7.4 Designated Operating Representative (if different than 7.1 above)

The Parties may designate operating representatives to conduct the communications which may be necessary or convenient for the administration of the operating provisions of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Applicant's Operating Representative (if different than 7.1 above):

Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____
E-mail: _____

7.5 Changes to the Notice Information

Either Party may change this notice information by giving five (5) business days' written notice prior to the effective date of the change.

Article 8. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Applicant

Signature: _____

Printed Name: _____

Title (if any): _____

Date: _____

For Portland General Electric Company

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment A

Modifications

EXHIBIT F: PARTY AND PARTY-AFFILIATE LOGOS

Commercial Solar Ventures Logo: please use name of entity in place of logo.

Bonneville Environmental Foundation (Seller) Logo



bonneville environmental foundation

Energy Trust of Oregon Logo



Section Three: Logo



Placement

Energy Trust’s brand identity is used across a wide range of mediums and in a variety of visual situations. To maintain a consistent presentation, the placement of the brand identity becomes an important consideration.

Area of Isolation

A minimum amount of space should surround the brand identity at all times. This “area of isolation” is determined by the size of the of the cap “E” of the logotype. Please note that this is the minimum amount of clear space, and that there can always be more space surrounding the logo.

Location on Page

The preferred placement of Energy Trust’s logo is in the upper or lower right corner.



Logo Formats

The Logo

Energy Trust's logo consists of an image and type. For a consistent look, the relationship between these two elements is fixed and never changes. The logo should not be reduced to the point where the text is unreadable.

Logo Formats:

Use an EPS or TIF format for:

- Print pieces (such as brochures, direct mail, flyers, etc.)
- Print advertising
- Television media

Use a JPEG format for:

- Microsoft Word and Excel documents
- Microsoft PowerPoint presentations

Use a JPEG or GIF format for:

- Web pages

Resizing the Logo on Your Computer

When a JPEG or GIF logo is inserted or placed into a document, it should not be enlarged as the edges will print out ragged. Instead, use a TIF or EPS* logo.

Inserting an EPS or TIF Logo in a Microsoft Document

1. Place the flashing cursor at the point in the document where you want the logo to be.
2. Choose "Insert" at the top menu bar.
3. Click on "Picture" then "From file." A window will open and you can then navigate to pick the logo you need.
4. Choose the logo, then click on "Insert."

Note: When adjusting the logo size, remember to hold down the shift key and drag only the corner "handles" of the image so that the proportions are maintained. The logo prints out best when reduced.

**The background of the EPS logo will be transparent. However, only some software will accept this type of file.*

Alternate Logo Versions

When the color version of the Energy Trust logo cannot be used, the following alternative versions are available. Please note that Energy Trust's logo cannot be used in any other colors or combinations of colors not presented in these guidelines.

One Color:
PMS 301



Black:



White:

Reversed, or "knocked out," of solid background



White with yellow burst:

Reversed, or "knocked out," of solid background



Note: This blue background used here is to show the white logo. The version of the logo is used when the background of your image is dark and the full color logo cannot be used.

Type Treatment

Occasionally, unique circumstances will not allow for use of Energy Trust's logo. This may include sponsorships, documents or other non-traditional creative pieces. In these instances, please use the type treatment. Use of type treatment must be approved by Energy Trust.

Type Treatment with "Inc."

EnergyTrust of Oregon, Inc.

EnergyTrust of Oregon, Inc.

EnergyTrust of Oregon, Inc.

Type Treatment without "Inc."

EnergyTrust of Oregon

EnergyTrust of Oregon

EnergyTrust of Oregon



Primary Identity Color Palette




Energy Trust's palette is driven by the vibrancy and positive nature of the organization. The colors specified below are used in combination to create "families" of communication elements.

Color Terms

PMS (Pantone® Matching System) colors are a standardized palette of ink colors that are mixed using formulas to match Pantone numbers. Pantone colors are generally used in printing 1-color, 2-color or 3-color materials.

CMYK colors are also referred to as "process colors" and are created by "building" colors using screens in the 4-color printing process. Use these CMYK formulas to match the Energy Trust colors.

RGB colors are Web-safe colors that most closely match the Energy Trust brand colors across all computer platforms and monitors.

			
PMS – Coated, Uncoated and Tree-free Paper:	PMS 311	PMS 1235	PMS 301
CMYK:	63c 0m 13y 0k	0c 29m 91y 0k*	100c 45m 0y 18k
RGB/Web Safe:	66CCFF	FFCC33	003399
RGB/Microsoft:	65r 196g 220b	253r 187g 48b	0r 101g 164b

*For best results and consistency, 4-color process is not recommended for this color. Print 4-color + one PMS whenever possible.

City of Portland Water Bureau (Buyer) Logo

About the Logo

The Water Bureau logo is comprised of four elements: the Benson Bubbler, the logo type (Bureau Name), the naturescape (forest, mountain, moon/sun), and the slogan ("From Forest to Faucet").

Attention has been given to the treatment and spacing of each element, therefore all components must be used together as one graphic unit.

Two versions of the logo have been created: the primary logo and a horizontal version. Practicality and appropriateness determine which version is used. Whenever possible, use the primary logo. Both versions of the logo are available in color, blue, grayscale, and black & white.

The logo must be used in accordance with the standards contained in this manual. It is available in the following file formats: EPS, TIFF, and JPG.

This official logo is the only one to be used on Portland Water Bureau materials, including publications, signage, apparel, documents and other official materials.

Primary Logo



Horizontal Logo



Correct Usage of the Logo

Care and thought has been put into the logo details: size relationships, weights, letter spacing, colors, etc.

Do not reset the type or modify any of the logo elements. Elements of the logo should never be re-sized independently, but together as one graphic unit, which includes all text, the naturescape, and the Benson Bubbler icon.

Approved logo files may be obtained on the Water Bureau Intranet site.

Logo Basics

You may enlarge or reduce the logo, but do not alter the relationship between the elements, and do not recreate the logo. Use the official logo only.

The Benson Bubbler may not be used alone.

The logo will look best on a white background.



Do not rotate



Do not change or delete slogan
"From Forest to Faucet"



Do not add special effects such as
drop shadows



Do not stretch



Engineering Division

Do not customize with words
Note: Phase Two of the "Graphic Standards Manual" will contain guidelines for Division Identifications



Do not invert or reverse logo



Do not change colors of logo

Official Portland Water Bureau Slogan

Full Version

"From forest to faucet, the Portland Water Bureau delivers the best drinking water in the world."

Short Version

"From forest to faucet"

