

**GRANT AGREEMENT NO:**

An agreement between the CITY OF PORTLAND, OREGON (City) and Bonneville Environmental Foundation (GRANTEE) to for the purpose of capital costs associated with the solar photovoltaic installation.

**RECITALS:**

1. The City of Portland Water Bureau recognizes the importance of encouraging the development of alternative and renewable energy generation sources to increasing the environmental quality and livability of the City of Portland.
2. The Portland Water Bureau also considers that the development of renewable energy sources will be to the long-term advantage of its ratepayers, increasing the economic and environmental sustainability of the water system.
3. The Grantee, Bonneville Environmental Foundation is a charitable and non-profit public benefit corporation dedicated to encouraging and funding activities and projects that lead to greater reliance on clean, environmentally preferred renewable power and supports watershed restoration programs.
4. The City has authorized the Grantee, Bonneville Environmental Foundation, to use grant funds for the purpose of paying capital costs for solar photovoltaic installation within the boundaries of the City of Portland.
5. The City now desires to enter into a formal grant agreement with the Grantee, Bonneville Environmental Foundation in the amount of \$350,000.

**AGREED:**

**I. Conditions of Grant**

- A. Grant funds shall be used by the Grantee only for the following: Funding for the purchase of a solar photovoltaic array to be installed at the City of Portland's Columbia South Shore Well Field pump station.
- B. Grant funds shall only be disbursed upon receipt by the City of a certificate from the Grantee, confirming that commercial operation has commenced.

**II. Funding, Method of Payment & Audit Requirement**

- A. The City shall provide funding not to exceed \$350,000 to the Grantee exclusively for the construction and installation of the solar photovoltaic installation.
- B. Grantee shall be required to cooperate with a City audit of all expenses.

### **III. Project Managers**

- A. The City's Project Manager shall be Dave Peters, or such other persons as shall be designated in writing by the Portland Water Bureau Administrator. The City Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this agreement, as provided herein, and to carry out all other city actions referred to herein. All formal, written communication to the Portland Water Bureau regarding the agreement should be directed to the City Project Manager.
  
- B. The Grantee's Project Manager is to be determined. All formal written communication regarding the agreement should be directed to its Project Manager. The Grantee's Project Manager is authorized to approve all financial and performance reports and to coordinate all monitoring activities that involve the Solar Photovoltaic Installation Project staff or records.

### **IV. Defaults and Remedies**

- A. A default will consist of:
  - (1) any use of Grant funds for any purpose other than activities related to the conditions of the grant by the Grantee and the Participating Parties;
  - (2) any breach of any covenant, agreement, provision, representation, or warranty of the Grantee made in this Grant Agreement;
  - (3) the failure to perform in accordance with this Grant Agreement;
  - (4) an assignment for the benefit of creditors or admission in writing of its inability to pay its debts generally as they become due, the appointment of a receiver, liquidator or trustee of the Grantee, or an adjudication of the Grantee a bankrupt or insolvent, or the filing of any petition for bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Reform Act, or any similar Federal or state statute by or against the Grantee; or any proceeding for the dissolution, reorganization or liquidation of the Grantee is instituted; unless any such appointment, adjudication, petition, or proceeding is involuntary and not consented to by the Grantee and the same is discharged, stayed or dismissed within 60 days after it is instituted; and
  - (5) a failure by the Grantee to commence, to the satisfaction of the City, work under any conditions of the grant by December 31, 2008.
  
- B. Promptly upon the discovery of any default with respect to any conditions of the grant the Grantee shall:
  - (1) give prompt written notice to the City;

(2) to the fullest extent possible, vigorously pursue or cause to be pursued all remedies available to Grantee to remove or cure such default, obtain redress therefore and minimize the effects of the default, including all reasonable efforts under the circumstances to complete the conditions of the grant.

C. Upon the occurrence of any default the City may reduce or recapture the Grant or take other appropriate action. For purposes of this section, "other appropriate action" means any remedial action legally available. In the event that the City makes such a determination, then the Grantee will deliver to the City certified, true copies of all documents in its possession relevant to the defaulted conditions of the grant.

D. **CHANGES.** The City or Grantee may, from time to time, request changes in writing in the terms and conditions hereunder. If all parties agree, such changes shall be incorporated in written amendments to this agreement.

Changes in funding up to twenty-five percent of the agreement total must be approved by the Portland Water Bureau Administrator. Any change that exceeds twenty-five percent of the original funding amount requires City Council approval.

E. **NON-DISCRIMINATION.** In carrying out activities under this agreement, the Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status or national origin. The Grantee shall take affirmative actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Grantee will comply with the equal employment and non-discrimination requirements of Portland City Code Sections 3.100.005 (City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights), 3.100.042 (Certification of subcontractors), and Chapter 23 – Civil Rights.

F. **ACCESS TO RECORDS AND RIGHT TO AUDIT.** Upon reasonable notice, and for a period of no less than three years after execution of this Agreement, the City shall have access to and the right to inspect, copy, and audit any books, general organizational and administrative information, documents, papers, and records of the Grantee which are directly pertinent to this agreement, for the purpose of making audit or monitoring, examination, excerpts, and transcriptions. All required records must be maintained by the Grantee per OAR 166 Division 200.

G. **MAINTENANCE OF RECORDS.** The Grantee shall maintain fiscal records on a current basis to support its billings to the City. The Grantee shall retain fiscal as

well as all records relating to program management and operation, program beneficiaries, demographics and eligibility for inspection, audit, and copying. The City or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Grantee regarding its billings or its work hereunder.

- H. **AUDIT OF PAYMENTS.** Upon reasonable notice, the City, either directly or through a designated representative, may audit the records of the Grantee at any time during the duration period established by Section F above.

If an audit discloses that payments to the Grantee were in excess of the amount to which the Grantee was entitled, then the Grantee shall repay the amount of the excess to the City.

- I. **INDEMNIFICATION.** The Grantee shall hold harmless, defend, and indemnify the City and the City's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Grantee, its employees, agents, or contractors related to this agreement.
- J. **CONFLICTS OF INTEREST.** No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this agreement or the proceeds thereof.

No board of director member or employee of the Grantee, during his or her tenure or for one year thereafter, shall have any direct financial interest in this agreement or the proceeds thereof.

No City Officer or employees who participated in the award of this agreement shall be employed by the Grantee during the agreement.

- K. **OREGON LAWS AND FORUM.** This agreement shall be construed according to the laws of the State of Oregon.

Any litigation between the City and the Grantee arising under this agreement or out of work performed 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 State of Oregon.

- L. **COMPLIANCE WITH LAWS.** In connection with its activities under this agreement, the Grantee shall comply with all applicable federal, state, and local laws and regulations.
- M. **PROGRAM AND FISCAL MONITORING.** The City shall monitor on a regular basis to assure agreement compliance. Such monitoring may include, but is not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the agreement. The frequency and level of monitoring will be determined by the City Project Manager.

