

INTERGOVERNMENTAL AGREEMENT**Between****City of Portland****And****Portland Development Commission****For the****Support of City Guarantee of State of Oregon Loan**

This Intergovernmental Agreement (this "Agreement"), dated this _____ day of _____, 2011, ("Effective Date") is made and entered into by and between the **City of Portland**, ("the City") and the **Portland Development Commission** ("PDC").

RECITALS

- A. SoloPower, Inc. (SoloPower) desires to construct facilities in the City of Portland that when completed and at full capacity, are expected to operate four high volume manufacturing ("HVM") lines and produce approximately 400MW of thin film photovoltaic modules annually (the "Solar Facilities");
- B. SoloPower anticipates developing the Solar Facilities in four phases, with an estimated cost of \$60 million for the first HVM line and an estimated cost of approximately \$340 million for building out of the four HVM lines;
- C. SoloPower estimates that it will employ at least 140 permanent, full time (FTE) positions at the time of the completion of the first HVM line at an average salary of \$51,000 per year plus a benefits package, and could employ an aggregate estimated 500 FTE positions upon completion and ramp up of all four HVM lines;
- D. SoloPower intends to construct the Solar Facilities in the Portland Enterprise Zone which was established by City Council on March 5, 2008 by Resolution No. 36583, and intends to apply for enterprise zone benefits pursuant to State law and City Policy; SoloPower will develop local procurement goals for its annual operations and make good faith efforts to procure goods and services from local firms and businesses. SoloPower has received a conditional commitment from the U.S. Department of Energy Loan Programs Office for a \$197 million loan guarantee (DOE Loan Guarantee), which will support construction of the Solar Facilities;
- E. SoloPower has secured a loan commitment from the Oregon Department of Energy ("ODOE") for a \$20 million State Energy Loan Program ("SELP") loan for the Solar Facilities, conditioned upon obtaining at least \$5 million in guarantees of the loan;

- F. SoloPower has received a pre-certification from ODOE for a Business Energy Tax Credit ("BETC") for the Solar Facilities in the amount of \$20 million (which has a cash value of approximately \$14 million if sold to a pass through partner);
- G. SoloPower has identified several sites in the Portland Enterprise Zone that likely are suitable for locating the Solar Facilities in the Rivergate Industrial Area of the City of Portland, and SoloPower intends to lease one of these sites or a similar site located within the City of Portland Enterprise Zone, provided that (1) upon due diligence by SoloPower, at least one of the identified sites adequately meets the requirements for the Solar Facilities, (2) the City provides a \$5 million Loan Guarantee of the SELP loan and the site qualifies for Enterprise Zone tax abatement, and (3) SoloPower is able to reach reasonable lease terms with a building owner;
- H. In exchange for the City providing the Loan Guarantee, in addition to providing community benefits required by law and City policy, SoloPower has agreed to provide additional community benefits including those described in Exhibit A hereto;
- I. The location of the Solar Facilities in the City of Portland will provide needed economic stimulus to the City and the region, and will help advance the City's 2009 Economic Development Strategy, as currently updated.
- J. The City and PDC desire to have the City provide a Loan Guarantee for \$5 million of the \$20 million SELP loan, supported by a pledge non-tax City revenues,
- K. PDC desires to backup the City's guarantee by providing up to \$5 million in additional contributions to a tax increment eligible project in the River District Urban Renewal District that will be of benefit to the City, which contributions will be repaid to PDC from non-tax City revenues at such time as the City Loan Guarantee is released;

Now therefore, the parties agree as follows:

AGREEMENT

1. **Loan Guarantee:** The City will attempt to finalize a Loan Guarantee of the SELP loan in a form similar to that attached hereto as Exhibit B. The Loan Guarantee will be limited to a pledge of Net Parking Meter Revenues, as defined herein.
2. **PDC Support:** The overall intent of the parties is for PDC to provide support to the City in the event the Loan Guarantee is ever called upon. Thus, if the City was called upon to make payment to ODOE under the Loan Guarantee, PDC would backstop such payment by making a contribution to a tax increment financing eligible project in the River District Urban Renewal District that is of interest and benefit to the City and which is consistent with the River District Urban Renewal Plan ("Identified TIF Project").

However, given the uncertain nature of the likely duration of the City Loan Guarantee (which will likely have a term of approximately 10 years, but may be extinguished far earlier in the event SoloPower repays the SELP loan earlier), the parties agree that it may be more prudent for the parties to select, and for PDC to provide additional funding for, an Identified TIF Project before the Loan Guarantee is either terminated or called upon.

- 3. Initial Identified TIF Project.** The City and PDC hereby identify the 10th and Yamhill project as the initial Identified TIF Project. This project, currently projected to break ground between 2013 and 2015, has a budget that includes contributions of \$5 million from the City and \$13.5 million from PDC. If the project proceeds to Closing, and if at the time of such Closing the City Loan Guarantee is outstanding and has not been terminated, PDC will increase its contribution to the 10th and Yamhill project by the amount of the Loan Guarantee, and the City's contribution will be reduced by the same amount. Any such increase in funding shall be subject to the formal approval of the amount of PDC funding by PDC's Commission. If PDC's Commission does not approve the increased funding of the 10th and Yamhill project, the parties shall select a Replacement Identified TIF Project.
- 4. Replacement Identified TIF Project.** The parties may at any time before the Closing of the 10th and Yamhill project identify a different Identified TIF Project. If the Replacement Identified TIF Project proceeds to Closing, and if at the time of such Closing the City Loan Guarantee is outstanding and has not been terminated, PDC will increase its contribution to the 10th and Yamhill project by the amount of the Loan Guarantee. Any such increase in funding shall be subject to the formal approval of the amount of PDC funding by PDC's Commission. If PDC's Commission does not approve the increased funding of the project, the parties shall select a new Replacement Identified TIF Project, and follow the same procedure as is described herein.
- 5. Termination of Obligation.** PDC shall not be obligated to provide additional funding to an Identified TIF Project if prior to PDC providing additional funding for such project:

 - A. SoloPower elects not to borrow funds under the SELP loan.

B. ODOE elects not to require the City Guarantee, or otherwise releases the City from its Guarantee, or

C. The SELP Loan is repaid, and the City Guarantee is extinguished.

6. **City Repayment of PDC Increased Contribution.** If prior to the extinguishment of the City Guarantee PDC provides additional contributions to an Identified TIF Project pursuant to this Agreement, the City agrees to reimburse PDC for such additional contributions at such time as the City Loan Guarantee is extinguished. While the City may select from what source it elects to reimburse PDC, the City agrees to pledge the Net Parking Meter Revenues as a repayment source. Such repayment obligation from the Net Parking Meter Revenues are subordinate to any limitations on repayment from the Net Parking Meter Revenues that are contained in the following Bond Indentures:

Issue	Final Maturity	Outstanding Balance	Meter Revenues Pledged?	Paid from Meter Revenues?
2009 Limited Tax Revenue Refunding Bonds (Streetcar)	4/1/2024	\$19,025,000	Yes	No

7. **Extinguishment of City's Repayment Obligation.** The City's obligation to repay PDC described in Section 6 above shall be extinguished in the event that the City makes payment to ODOE pursuant to the terms of the Loan Guarantee, but only to the extent and to the amount that City actually pays to ODOE. If the City makes payment to ODOE under the Loan Guarantee, the City shall assign to PDC all collateral and collection rights that it has from SoloPower or any other party related to the Loan Guarantee.

8. **Net Parking Meter Revenues.**

"Net Parking Meter Revenues" means the Available Meter Revenues less any amounts which are required to pay debt service or fund reserves for prior meter obligations to which Guarantor's obligations under this Guaranty are expressly subordinate, including Guarantor's revenue bonds listed in Paragraph 6 above, and any future obligations issued to refund those revenue bonds if those obligations state that their lien is superior to the lien of the Guaranty

and the debt service on such obligations is equal to or less than the bonds that have been refunded..

"Available Meter Revenues" means the gross revenues received and collected from the operation of on-street parking meters owned by the City and located within the City, including citations, parking permit, and other related fees, less any part of such gross revenues which must be used to pay the costs of collecting those revenues, parking enforcement, meter maintenance, and parking program management and administration.

IN WITNESS WHEREOF, the Bureau and PDC have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Patrick Quinton
Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date