

**Exhibit A****GRANT AGREEMENT NO.**

This Grant Agreement ("Agreement") is between the CITY OF PORTLAND, OREGON ("CITY" OR "GRANTOR") and Tangerine Power Corporation ("GRANTEE"), a Washington corporation duly registered to do business in Oregon, in an amount not to exceed \$100,000. This Agreement may refer to the CITY and GRANTEE individually as a "Party" or jointly as the "Parties."

**RECITALS:**

1. Since Council adopted a City Energy Policy in 1990, the City has had a stated policy to "support environmentally acceptable, sustainable energy sources, especially renewable resources such as solar." Ordinance No. 162975.
2. In 2007, the U.S. Department of Energy (DOE) designated Portland as one of thirteen Solar America Cities. On October 24, 2007, Council authorized the Office of Sustainable Development to accept a \$200,000 award from DOE to fund activities to further the market expansion of solar within Portland. Ordinance No. 181375.
3. On March 3, 2009, Council authorized the Bureau of Planning and Sustainability to accept a \$400,000 grant from the federal Department of Energy ("DOE" to continue its successful solar market transformation activities under the Solar America Cities: Special Projects program. Ordinance No. 183557.
4. Funding for the award was authorized and appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (ARRA). Congress enacted ARRA to create jobs, promote economic recovery and provide investments needed to increase energy efficiency that will provide long-term economic benefits.
5. An overarching objective of the DOE award of the Solar America Cities: Special Projects funding was to "remove barriers to neighborhood-scale energy solutions." In particular, the DOE-Portland agreement states that Portland will "develop a framework for participation and development of a community solar project."
6. On January 11, 2012, the City issued a request for proposals, seeking responses on private sector partnerships to finance community-supported solar photovoltaic systems on pre-identified public facilities. The City's request for proposals is attached to this Agreement as Exhibit A, and is incorporated by reference as if fully set forth in this Agreement. GRANTEE was ultimately selected by the evaluation review committee as the successful proposer.
7. Funding for this Agreement originates from Solar America Cities: Special Projects award, as accepted by Council under Ordinance No. 183557.

8. Grant funding will support the design of a replicable program model for the development of community-supported solar energy systems in Portland, as articulated in GRANTEE's proposal, submitted in response to the City's RFP. GRANTEE's proposal is attached to this Agreement as Exhibit B, and is incorporated by reference as if fully set forth in this Agreement. Elements of program design eligible for reimbursement under this Agreement will include program management, oversight of construction progress on the various selected solar sites, development of financing agreements and marketing.
9. Provided that due diligence does not uncover insurmountable obstacles, grant funding should lead to the financing and installation of five to eight solar energy systems on pre-identified sites owned by City and Portland Public Schools, selected from a list of pre-qualified sites.

**AGREED:**

**I. ACTIONS TO BE TAKEN BY GRANTEE**

Pursuant to the above Recitals which are fully incorporated into this Agreement and in consideration of the grant funds provided by CITY, GRANTEE agrees to perform the requirements of this Agreement, and to spend the grant funds as follows:

**Program management.** Grantee will be City's primary point of contact and will act as project developer. In this role, Grantee will:

- oversee and coordinate all aspects of program design, development and delivery;
- develop and execute all necessary contracts with such persons as may be essential to implement the community-supported solar deal;
- administer the grant award, including submission of required reports and data, in compliance with the requirements of this Agreement;
- meet periodically, as scheduled by the Grant Manager, to report on progress and provide updates on project status; and,
- oversee progress of the solar energy system construction..

Key dates and deliverables:

March 19, 2012:	Internal contracts executed
April 23, 2012:	Site lease agreements signed
October 1, 2012:	Commissioning completed
October 14, 2012:	Final installation deadline

**Financing agreements.** Grantee will execute legal agreements with wholesale and retail financing partners necessary for installation and operation of the solar energy systems, in accordance with Exhibit B. Grantee will make available information and/or documentation that makes the legal structure of the deal visible and transparent to the CITY, such as letters of commitment from third parties or contractual documents (proprietary information redacted if necessary).

Key dates and deliverables:

April 16, 2012: Wholesale financing commitment obtained.  
June 15, 2012: Retail financing product available.

**Marketing and community outreach.** Grantee will develop a strategic marketing plan that outlines an inclusive approach to soliciting community participation in the development of the solar energy systems on public facilities. Messaging regarding the sale of solar Certificates of Deposit (CDs) will be developed in collaboration with CITY. Activities may include personalized outreach to community-based organizations, paid media, earned media, and digital and social media.

Key dates and deliverables:

April 2, 2012: Delivery of marketing plan.  
May 31, 2012: Establish framework for participation in community funding  
October 31, 2012: 100% of community funding obtained.

## II. SPECIFIC CONDITIONS OF THE GRANT

- A. Publicity: Prior to development of marketing, outreach and publicity materials, Grantee will consult with CITY regarding public acknowledgement of CITY role in the community-supported solar project. CITY may request placement of Bureau logo, City seal or other forms of publicity in printed or digital materials. Nothing in this Agreement implies CITY's endorsement or support of the viewpoints expressed by GRANTEE. CITY and GRANTEE will cooperate in exchanging advance copies of marketing materials before public release, and will work to address concerns the other party may have with materials before they are released. Marketing materials include publicity releases, press events, case studies, web sites and other opportunities to highlight and promote the success of the project.
- B. Grantee Representative: GRANTEE's authorized representative for this Agreement is Stanley Florek, stanley.florek@tangerinepower.com.
- C. City Grant Manager: The City's Grant Manager for this Agreement is Andria Jacob, or such other person as may be designated by CITY in writing.
- D. Billings/invoices/Payment: The Grant Manager is authorized to approve work and billings and invoices submitted pursuant to this Agreement and to carry out all CITY actions referred to in this Agreement.
- E. Cost-Share ("Match") Requirement: Terms and conditions of U.S. DOE grant include a cost-sharing requirement. Each grant dollar must be matched with one dollar from the GRANTEE (i.e., 1:1 match). GRANTEE is required to track and report on the cost-share.
- F. Reports: GRANTEE will submit to the Grant Manager a report at the completion of all work, services or actions required of GRANTEE under this Agreement. The Final Report will include:

1. a summary of the project outcomes and accomplishments, community benefits and lessons learned;
2. documentation of the legal framework underlying the project;
3. final budget spending report, and required metrics, including but not limited to jobs created and installed capacity;
4. summary of marketing and outreach activities;
5. number of customers and dollar value of solar (CD) purchases; and,
6. Such other details as the CITY may identify.

Grantee must also provide information upon request to satisfy CITY's reporting quarterly requirements to U.S. DOE, including reporting on the cost-share October 31, 2012.

CITY reserves the right to request additional documentation regarding GRANTEE's expenditure of grant funds in compliance with the Agreement and/or interim reports or information on the progress of work, services or actions required from GRANTEE.

### III. PAYMENTS

- A. Payments under this Agreement may be used only to provide the services or take the actions required under this Agreement and shall not be used for any other purpose.

- B. GRANTEE will receive its funding as follows:

Initial lump sum payment of 20% of total grant amount (\$20,000) upon contract execution. Grantee will need to fully recover this advance before additional payments will be made. Grantee will submit advance recovery requests on a weekly basis accompanied by appropriate back-up documentation of eligible expenses.

Subsequent to the recovery of the initial advance, City will reimburse Grantee for actual expenses. Grantee may submit invoices for reimbursement on a weekly basis. City will make reimbursement payments on a "net zero" basis.

- C. GRANTEE shall keep vendor receipts and evidence of payment for materials and services, time records, payment for program wages/salaries and benefits. All receipts and evidence of payments will be promptly made available to the Grant Manager or other designated persons, upon request. At a minimum, copies of such records shall be provided in support of the Final Report.

### IV. GENERAL PROVISIONS

- A. Grant Subject to ARRA Provisions. The CITY's funding for this Agreement is exclusively provided through funds provided under the American Recovery and

Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act;" or "ARRA") in an award from the DOE. Copies of the DOE award documents have been separately provided to GRANTEE by the CITY. The Recovery Act, and federal agency guidelines, impose various requirements and conditions upon recipients and subrecipients of Recovery Act funds, including but not limited to, data tracking, reporting requirements and whistleblower notification. As a result, the project is subject to all applicable terms and requirements of ARRA, in addition to requirements imposed by the DOE. As a sub-recipient, the GRANTEE must comply with the requirements of the ARRA. The ARRA terms and conditions regarding this Agreement are set forth in Exhibit C to this Agreement, and are incorporated into this Agreement as if set forth in full. In the event of conflict between the other terms and conditions of this Agreement and these ARRA related-provisions, the terms and conditions of the ARRA provisions shall control. These ARRA requirements shall be binding on the GRANTEE as a condition of receipt of funds under this Agreement.

- B. If for any reason GRANTEE receives a grant payment under this Agreement and does not use grant funds, provide required work or services or perform as required by the Agreement, then CITY may at its option terminate this Agreement, reduce or suspend any grant funds that have not been paid, require GRANTEE to immediately refund to CITY the amount improperly expended, return to CITY any unexpended grant funds received by GRANTEE, require GRANTEE to fully refund any or all grant funds received, or any combination thereof.
- C. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if GRANTEE uses grant funds outside of the scope of this Agreement, or if GRANTEE fails to comply with any other term or condition or to perform any obligations under this Agreement within five (5) business days after written notice from CITY. If the breach is of such nature that it cannot be completely remedied within the thirty (30) day cure period, GRANTEE shall commence cure within the five (5) business days, notify CITY of GRANTEE's steps for cure and estimate time table for full correction and compliance, proceed with diligence and good faith to correct any failure or noncompliance, and obtain written consent from CITY for a reasonable extension of the cure period.
- D. No Payment or Further Services Authorized During Cure Period. During any cure period, CITY is under no obligation to continue providing additional grant funds notwithstanding any payment schedule indicated in this Agreement. During any cure period, unless specifically authorized in writing by City, GRANTEE shall not perform services or take actions that would require CITY to pay additional grant funds to GRANTEE. During any cure period, GRANTEE shall not spend unused grant funds and such unused funds shall be deemed held in trust for CITY. GRANTEE shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform the requirements of this Agreement.
- E. Termination for Cause. Termination for cause based on GRANTEE's misuse of grant funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective after 5 business days unless a written extension of the period in which to cure is granted by CITY. GRANTEE shall return all grant funds that had not been expended as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Agreement shall, at the

option of CITY, become the property of CITY; and GRANTEE may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination, in a sum not to exceed the grant funds already expended.

- F. Penalty for Termination for Cause. If this Agreement is terminated for cause, CITY, at its sole discretion, may seek repayment of any or all grant funds tendered under this Agreement, and decline to approve or award future grant funding requests to GRANTEE.
- G. Termination by Agreement or for Convenience of City. CITY and GRANTEE may terminate this Agreement at any time by mutual written agreement. Alternatively, CITY may, upon thirty (30) days written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion. If the Agreement is terminated as provided in this paragraph, GRANTEE shall return any grant funds that would have been used to provide services after the effective date of termination. Unless the Parties agree otherwise, GRANTEE shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds.
- H. Changes in Anticipated Services. If, for any reason, GRANTEE terminates, discontinues or interrupts its provision of the anticipated services or actions under this Agreement, CITY's payment of grant funds may be terminated, suspended or reduced. GRANTEE shall immediately refund to CITY any unexpended grant funds received by GRANTEE.
- I. Amendment. The Grant Manager is authorized to execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase CITY's financial risk. Increases to the grant amount, or changes increasing the City's financial risk, must be approved by the City Council by ordinance. Any amendments to this Agreement must be in writing and executed by the authorized representatives of the Parties and approved to form by the City Attorney.
- J. Non-discrimination: Civil Rights. In carrying out activities under this Agreement, GRANTEE shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. GRANTEE shall take 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, sexual orientation or national origin. Actions 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. GRANTEE shall post in conspicuous places, available to employees and applicants for employment, notices provided by CITY setting for the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph in all of other agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246.

- K. Maintenance of and Access to Records. GRANTEE shall maintain all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Agreement or GRANTEE's performance of work or services, for four (4) years after CITY makes final grant payment or the termination date of this Agreement, whichever is later. GRANTEE shall provide CITY prompt access to these records upon request and permit copying as CITY may require.
- L. Audit. Separate from the audit and review requirements under ARRA, the CITY may also conduct financial or performance audit of the billings and services under this Agreement or GRANTEE records at any time in the course of this Agreement and during the four (4) year period established above. As applicable, audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit discloses that payments to GRANTEE exceeded the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to CITY.
- M. Indemnification. GRANTEE shall hold harmless, defend, and indemnify CITY, and its officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from actions or omissions of GRANTEE and/or its contractors in the performance of this Agreement. This duty shall survive the expiration or termination of this Agreement. GRANTEE shall be solely responsible for development and selection of community funding participation standards, and for operation, administration and continuation of the project. The CITY shall have no responsibility or liability for GRANTEE's operation, management or administration of the project. The CITY makes no warranties, express or implied, regarding any aspects of the project objectives.
- N. Insurance. GRANTEE shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. CITY reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.
1. Workers' Compensation Insurance. As an out-of-state employer, GRANTEE shall comply with the requirements of ORS 656.126, as it may be amended from time to time. Throughout the duration of this Agreement, GRANTEE shall maintain required workers compensation coverage for all subject workers at its sole expense. Any sub-grantees or subcontractors shall comply with the requirements of ORS Chapter 656, as it may be amended from time to time, at their sole expense.
  2. Commercial General Liability Insurance: Throughout the duration of this Agreement, GRANTEE shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

3. Automobile Liability Insurance: GRANTEE shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.
4. Additional Insured: The liability insurance coverages shall be shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the GRANTEE's or its contractor's activities to be performed or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
5. Continuous Coverage; Notice of Cancellation: GRANTEE shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non renewal of coverage without thirty (30) days written notice from GRANTEE to CITY. If any of the required insurance is canceled or terminated prior to termination of the Agreement, GRANTEE shall immediately notify CITY and provide a new, replacement policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement without notice from CITY.
6. Certificate(s) of Insurance: GRANTEE shall provide proof of insurance through acceptable certificate(s) of insurance, along with applicable endorsements, to CITY at execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of grant funds. The certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to CITY. GRANTEE shall pay for all deductibles and premium from its non-grant funds. CITY reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required. The insurance certificates shall be subject to the review and approval of the City Attorney as to adequacy under the requirements of this Agreement.
7. Use of Subgrantees or Subcontractors: If providing funds to subgrantees or using subcontractors for performance of any of the work under this Agreement, Grantee shall inquire and keep records as to the subgrantee or subcontractor financial ability to cover potential liability claims. Such financial resources may include providing insurance coverage naming the Grantee as an additional insured for the performance of the funded work.



- O. Grantee's Contractor; Non-Assignment. If GRANTEE utilizes contractors to complete its work under this Agreement, in whole or in part, GRANTEE shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Agreement as specified in this Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to GRANTEE hereunder. This Agreement shall not be assigned or transferred in whole or in part or any right or obligation hereunder, without prior written approval of CITY.
- P. Independent Contractor Status. GRANTEE, and its contractors and employees are not employees of CITY and are not eligible for any benefits through CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
- Q. Conflict of Interest. No CITY officer or employee, during his or her tenure or for two (2) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any CITY officer or employee who selected GRANTEE, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from GRANTEE or be employed by GRANTEE during the term of the Agreement, unless a prior written waiver is obtained from CITY.
- R. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to principles of conflicts of law. Any litigation between the Parties arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County Circuit Court or the United States District Court for the State of Oregon, Portland Division.
- S. Compliance with Law. GRANTEE and all persons performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. If GRANTEE is a 501(c)(3) organization, GRANTEE shall maintain its nonprofit and tax exempt status during this Agreement. GRANTEE shall be EEO certified by CITY in order to be eligible to receive grant funds.
- T. Independent Financial Audits/Reviews. As a recipient of between \$25,000 and \$300,000 in City funds, Grantee must obtain an independent financial review. Grantee will provide two copies of this financial review to the Grant Manager upon request by the Grant Manager.
- U. Order of Precedence. This Agreement consists of the terms and conditions of this Agreement, the Request for Proposals (RFP) issued by the CITY, attached as Exhibit A, and GRANTEE's proposal in response to the RFP, attached as Exhibit B. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: First, this Agreement's terms and conditions shall control; second, the CITY's RFP; and, last, GRANTEE's proposal in response to the RFP.
- V. Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean unforeseeable acts or events beyond the party's reasonable control including, but not limited to: acts of God; landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, strikes, explosions,

lockouts or other industrial disturbances, insurrections, public riots, partial or entire failure of utilities, nuclear or other civil or military emergencies; or any other circumstances which are not within its reasonable control of the distressed party. If either party is wholly or partially unable to carry out or perform its obligations under this Agreement as a result of Force Majeure, the distressed party shall not be deemed in violation or default during the duration of the Force Majeure. The distressed party shall take immediate and diligent steps to comply as soon as possible under the circumstances, and shall take all necessary corrective steps to remedy as expeditiously as possible the non-compliant responsibilities and duties affected by the Force Majeure. The distressed party shall give prompt notice of such Force Majeure, describing the same in reasonable detail. The distressed party's obligations under this Agreement shall not be deemed in violation or default for the duration of the Force Majeure. In the event that delay in performance or failure to perform affects only part of the distressed party's capacity to perform, the distressed party shall perform to the extent that it is reasonably able to do so. Force Majeure shall not apply to any obligations under this Agreement for the payment of monies due.

- W. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- X. Merger. This Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Agreement that are not contained herein, or are explicitly incorporated by reference.
- Y. Program and Fiscal Monitoring. CITY shall monitor on an as-needed basis to assure Agreement compliance. Monitoring may include, but are 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 Grant Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- Z. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the Parties.
- AA. Electronic Transaction; Counterparts. The Parties agree that they may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures. This Agreement, and any amendment, may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- BB. Nonenforcement by the City. GRANTEE shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the CITY to enforce prompt compliance, nor does the CITY waive or limit any of its rights under this Agreement by reason of such failure or neglect.

## V. TERM OF GRANT

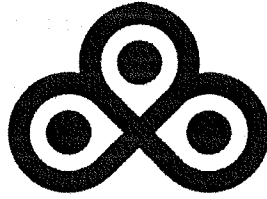
The terms of this Agreement shall be effective when an ordinance is passed by City Council and the Agreement is executed by all the Parties, as shown by the authorized signatures below, and shall remain in effect during any period for which GRANTEE has received grant funds or when obligations are due from GRANTEE.

This Agreement and all work by GRANTEE shall terminate no later than December 31, 2012.

CITY OF PORTLAND	GRANTEE
Name: _____ Title: _____ Date: _____	Name: _____ Title: _____ Date: _____
<p>Approved AS TO FORM</p> <p><i>James H. Vandylke</i> CITY ATTORNEY 3/6/12</p> <p>City Attorney</p>	

List of Exhibits:

- Exhibit A - City of Portland Request for Proposals for Community-Supported Solar Installations
- Exhibit B - Tangerine Power Corporation Response to City RFP
- Exhibit C - ARRA Compliance Requirements



Bureau of Planning and Sustainability  
Innovation. Collaboration. Practical Solutions.



**Request for Proposals  
For  
Private-Sector Partnerships to  
Finance Community-Supported Solar Electric  
Systems on Public Facilities**

**PROPOSALS DUE: February 6, 2012 by 4 p.m. Pacific Standard Time**

Electronic submission shall include RFP title in e-mail subject line.

Submit one (1) original electronic copy of the Proposal (in PDF file format) to:

Andria Jacob  
[andria.jacob@portlandoregon.gov](mailto:andria.jacob@portlandoregon.gov)

## Section 1. Funding Opportunity Description

The City of Portland Bureau of Planning and Sustainability (BPS) is seeking to facilitate collaborative relationships between private-sector parties that have federal tax liability and an interest in owning solar energy systems; public-sector entities that own roof space and have policies that support renewable energy development; and non-profit organizations and/or community-based organizations that currently operate in the solar energy marketplace or that have interest in doing so. The purpose of this collaboration is to finance and install community-supported solar electric systems on publicly owned rooftops. BPS has \$100,000 in federally awarded funds to contribute to certain aspects of program development. Funds must be expended no later than June 30, 2012, with system installation completed no later than October 14, 2012. Respondents are required to provide a 1:1 match for federal funds.

BPS has engaged in various efforts over the past several years to increase the adoption of solar energy technologies and to transform the market for solar in Portland and beyond. Working with partners, BPS has provided outreach and education, zoning code changes, and technical support for neighborhood-driven campaigns for purchasing solar panels (Solarize Portland). These efforts have significantly spurred the installation of solar on residential and business properties. Installed photovoltaic (PV) capacity in Portland is now close to 10 megawatts.

However, installation and direct ownership of on-site solar remains out of reach for many Portlanders for a variety of reasons, including site ownership, financial commitment, and solar resource constraints such as shading or roof orientation. Community solar represents a new addition to Portland's tools for transforming the local market for solar energy. Community solar is intended to make participation in the installation of PV systems available and accessible to a wider, more diverse audience of Portlanders, including renters, homeowners with shaded properties, and those wanting to fund PV in smaller increments than a typical residential system.

BPS's project objectives include:

- Making solar energy generation more accessible to Portland citizens for whom direct ownership of solar on their own roofs is not feasible.
- Providing opportunity for funding of solar energy in affordable increments.
- Demonstrating a model for community-supported solar in Oregon under current legal and regulatory conditions.
- Providing some return of benefits (in a manner compliant with Securities and Exchange Commission regulations) to community members who contribute funding for system construction costs.
- Leveraging federal tax credits and depreciation benefits that accrue to solar electric system owners with appropriate federal tax liability.
- Fostering the development of a replicable program model and ownership structure for community solar, such as the establishment of a solar funding cooperative that could sustain itself beyond a one-time effort.

## Background

Portland was designated as a Solar America City (SAC) by the US Department of Energy in 2007. Portland has received two rounds of funding under the SAC program; the second round was made available under the American Recovery and Reinvestment Act of 2009 (ARRA). This community solar funding opportunity is made possible by ARRA funds, which carry with them certain reporting, purchasing and compliance standards (see Section II for more details on ARRA requirements).

Through the SAC award, BPS has access to the legal services of Keyes & Fox, LLP, a firm specializing in renewable energy law. Keyes and Fox provided BPS with preliminary analysis of the development of a cooperative structure for financing solar ownership. BPS also engaged Blue Tree Strategies, a triple-bottom line consulting firm, to provide initial project pro-forma analysis and recommendations for effective deployment of federal funds into the project, in context of BPS's overarching objectives. The findings, recommendations and correspondence from these consulting engagements are contained as Exhibits A-B.

Two primary findings have emerged from the work BPS has conducted to date:

1. Because most of the financial benefits of solar energy ownership are realized through federal tax incentives, it is highly preferable that the development of community solar projects in Portland involves a private-sector partner that is eligible to take advantage of the federal Investment Tax Credit and associated depreciation benefits. Further, it is important that this partner possess the requisite capabilities to engage in tax-equity finance.

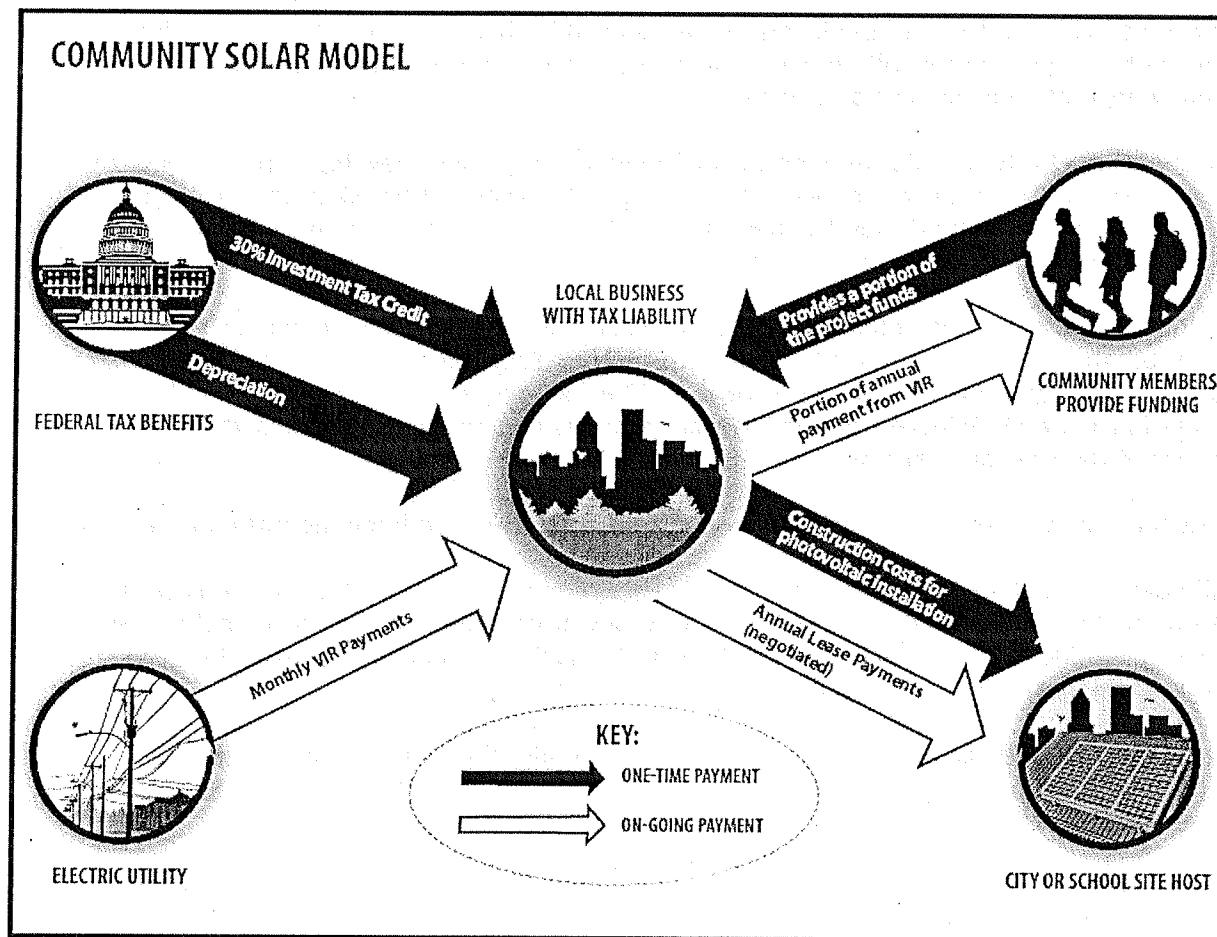
While BPS could simply purchase the panels outright with the ARRA funds, this avenue is least preferable because it leaves significant financial leverage on the table, nor is it replicable given the one-time nature of ARRA funds. Leverage and replicability are both important objectives for BPS.

2. In addition to the federal tax incentives, Oregon's Volumetric Incentive Rate (VIR) structure provides a critical revenue stream for financing community solar. Therefore, BPS, in partnership with Portland Public Schools, applied for VIR allocations in October 2011 and received allocations for eight qualified sites for community solar projects (see Exhibit C for list of sites and Exhibit D for map of site locations). Through this incentive, the Oregon Public Utility Commission sets rates paid for PV-generated electricity from qualified systems for a period of 15 years from system installation. The annual value of the electricity created is determined by the total generation of the system and the VIR at the time of incentive application. *(Note: by using this incentive structure, community solar projects are ineligible for incentives from either the Energy Trust of Oregon or Oregon state tax credit programs).*

Given these current financial, regulatory and legal realities, one possible set of relationships to finance and construct a community solar project is depicted in Figure 1 below. The business entity at the center should be structured in a manner that allows it to capture the Federal Investment Tax Credit and associated capital depreciation. This entity will be the legal owner of the photovoltaic system located on the public-sector site host's property. Note that a portion of the capital costs for funding the system in this model come from voluntary community participation. BPS prefers that these community members do not merely donate money for the project, but rather have some expectation of shared benefit. The system owner is assigned by the site host to receive the monthly VIR payments from the utility, based

on the previous month's PV generation, and pays an annual lease payment for the use of the site. Ideally, community members also receive a portion of the benefits from the stream of the VIR, allocated in a periodic and equitable manner. While this figure represents some of the general financial transactions, it does not illustrate all the necessary legal relationships between parties.

Figure 1. Proposed Model for Community-Supported Solar



Proposals detailing alternative collaborative structures are encouraged; however, respondents should be sure to explain how the proposed model or structure addresses BPS's stated project objectives.

#### Work Performed by Grantee(s) and Use of Funds

Grant funds are intended to catalyze the installation of at least one 10-kilowatt photovoltaic system at one of the sites listed in Exhibit C. Community members must be offered the opportunity to participate in the financing of the system(s) through fractional contributions. As these funds are pooled, they will help offset the costs of construction for the system owner (taxable entity).

It is clear that there will be operational costs associated with developing this model of community solar. BPS intends to use grant funds to help the selected Proposer(s) defray costs associated with activities required to design and develop the community solar program model, such as legal, tax and accounting review, marketing and administration.

*Legal, tax and accounting review.* BPS anticipates that the tax-equity investor will require the opinions and advice of a specialized tax attorney. In structuring a model for developing community-supported solar project(s) and distributing benefits to participants, it will be important to ensure that all applicable Securities and Exchange Commission (SEC) rules are adhered to. Legal counsel will be necessary if the proposal involves the establishment of a formal cooperative ownership structure.

Key contractual relationships implicit in community solar project development that also may necessitate legal counsel include execution of a grant agreement between the City and the recipient of the ARRA funds and the negotiation of a capital lease agreement between the site host (City of Portland or PPS) and system owner.

BPS has invested in the development of preliminary pro-forma analysis to demonstrate potential internal rates of return for a private-sector entity that invests in a community solar project (see Exhibit E for a condensed version. The full analysis may be made available to selected Proposers). Selected respondents are strongly encouraged to conduct their own analysis of the risks and returns.

Grant funds may be used to offset the costs of these start-up and implementation activities.

While BPS has made a good-faith effort to identify relevant legal and financial considerations, the City makes no representation as to the accuracy or completeness of these analyses and does not provide tax or financial advice. Selected respondents bear full responsibility for the legal and financial consequences of decisions they make.

*Marketing.* Grant funds may be used for design and production of marketing materials, purchase of paid advertising or other desired marketing and PR activities intended to raise awareness and solicit participation in the community solar project.

*Administration.* Grant funds may be used to cover costs related to project reporting and administration. Grant funds used for this purpose may not comprise more than 10% of the total award.

Successful respondents will receive funding to support some combination or all of these activities. Respondents may propose other activities for funding in addition to these. A proposed budget outlining anticipated activities and costs is required as part of the proposal response (see Section III).

### **Project Deliverables**

Deliverables for this project shall be provided to the City's project manager on the following schedule:

- Complete a grant agreement (sample included as Exhibit F) and the necessary insurance documents with the Bureau of Planning and Sustainability within 30 days of award.



- Meet with BPS staff for kick-off meeting with partners within two (2) weeks after project award. Continue to meet and communicate with BPS with regular frequency during the grant period.
- Submit a program work plan no later than 30 days after project award that details project milestones and associated release of grant payments.
- Submit monthly status reports documenting updates on key project outcomes, including ARRA-required metrics as noted in Section II below.
- Submit final report at conclusion of project.

While PV system installation is not a contractually mandated deliverable of this project, BPS and US DOE wish to see that these funds lead to a completed, community-owned solar electric installation at one of the eight identified sites listed in this RFP. If for some reason in the course of due diligence, it becomes clear that project development cannot continue (e.g., community support fails to materialize), BPS expects that the selected project team will provide a detailed written explanation of the key lessons learned.

#### **Work Performed by the City**

BPS has assigned a project manager to oversee the work of the successful Proposer(s). BPS will provide support to the successful Proposer as possible, including:

- Project oversight and coordination;
- Demand creation and marketing support;
- Assistance with contracting for solar installation;
- Assistance with ARRA compliance; and
- Other needs identified and included in the grant agreement.

#### **Section II. Award Information**

##### **Eligible Applicants**

Non-profit organizations, community-based organizations, solar installers and private-sector firms are eligible to apply for this funding opportunity. BPS encourages proposals submitted by collaborative teams comprised of eligible entities that are organized around the community solar program objectives outlined in Section I.

##### **Type of Award**

BPS will enter into a Grant Agreement with each successful Proposer. (See Exhibit F).

##### **Estimated Funding and Award Size**

BPS has a total of approximately \$100,000 available through this funding opportunity. BPS anticipates making between one to three awards from this pool. BPS reserves the right to award less than the full amount of funding available.

### Period of Performance

Project activities funded by these grants must be fully completed by June 30, 2012, see project timeline below. The PV system does not have to be fully installed until October 14, 2012. However, all grant funds must be expended, invoiced and paid by June 30, 2012.

### Proposed Timeline

Jan. 23	Mandatory pre-application meeting
Jan. 25	Deadline for submission of clarifying questions
Jan. 27	Answers published
Feb. 6	Proposals due, 4:00 p.m. Pacific Standard Time
Feb. 13	Respondents notified of interviews (if deemed necessary)
Feb. 15-16	Interviews and proposer selection
Feb. 28	Grant agreement signed
Mar. 15	Final site evaluation and selection
Apr. 15	Marketing of community solar offer begins
May 1	Site lease and contract development with site host
Jun. 15	Interconnection agreements signed by site host
Jun. 30	Grant funds expended
Aug. 1	Construction of project begins
Oct. 14	System installation complete

### ARRA Requirements

This community solar funding opportunity is made possible by the American Recovery and Reinvestment Act of 2009 (ARRA) funds. On Feb. 13, 2009, Congress passed ARRA as a direct response to the economic crisis. The Recovery Act has three immediate goals:

- Create new jobs and save existing ones;
- Spur economic activity and invest in long-term growth;
- Foster unprecedented levels of accountability and transparency in government spending.

BPS's collective efforts under the Solar America Cities award are designed to meet these objectives. Certain provisions of ARRA are applicable only to specific types of grant recipients and/or to specific projects. Grant agreements resulting from this RFP will include the relevant terms and conditions required by ARRA. Specific ARRA requirements will be contained in the final grant agreement, however, some examples include:

- Documentation of hours worked by project staff and sub contractors. ARRA funds are intended for job creation or retention, so it is important to capture economic activity resulting from this award. Job hours worked is the standard metric for ARRA reporting.
- Submission of Dun and Bradstreet's Data Universal Number ("DUNS"), and Central Contractor Registration ("CCR") number. Both numbers are requirements of federal reporting and tracking.
- Submission of monthly reimbursement receipts with relevant payroll receipts or backup documentation.
- Submission of final report by June 30, 2012.
- Display of the ARRA logo in a manner that informs the public that the work performed is an ARRA investment.

### **Section III. Proposal and Submission Information**

Proposals must be received electronically by BPS no later than 4:00 pm Pacific Standard Time on **February 6, 2012**. Proposals must be clear, succinct and should not exceed ten (10) 8.5 x 11" pages. All submittals will be evaluated on the completeness and quality of the content. Only those Proposers providing complete information as required will be considered for evaluation.

#### **Pre-application Meeting**

A mandatory pre-application meeting will be held on January 23, 2011 from 10 am-12 pm at the Bureau of Planning and Sustainability, 1900 SW 4<sup>th</sup> Ave., Portland, Oregon, in Conference Room 7A. At least one representative from each proposal team must attend. The intent of the meeting is to provide an overview of the program objectives and to answer questions regarding the RFP and the application process. The event will also serve as a networking opportunity to meet other potential applicants and begin to build partnerships for the project. Attendees are expected to have read the RFP prior to the conference.

#### **Proposal Clarifications**

Questions and requests for clarification regarding this RFP must be directed via email to the person listed below. The deadline for submitting such questions/clarifications is 5:00 pm Pacific Standard Time on Wednesday, January 25, 2012. BPS will provide answers to all potential respondents in a publicly available format (via email and posted at [www.portlandonline.com/bps/rfpcommsolar](http://www.portlandonline.com/bps/rfpcommsolar)) no later than close of business on Friday, January 27, 2012.

Refer questions to: Andria Jacob, [andria.jacob@portlandoregon.gov](mailto:andria.jacob@portlandoregon.gov)

#### **Proposal Structure and Content**

The proposal should use the following structure to provide the requested information. There are six main elements to the proposal: 1) cover letter, 2) project narrative, 3) team qualifications and experience, 4) budget, 5) diversity and 6) letters of support. Additional supporting information may be provided, if desired. Letters of support and additional information will not count toward the page limitation.

##### **1. Cover letter**

Please include the following applicant information in the cover letter:

- Name
- Organization
- Mailing address
- Email address
- Phone number
- Total grant amount requested
- Project name
- Brief project summary

## 2. Project narrative

The Proposer should write a clear and concise description of the overall project approach and specific activities that will take place during the grant period.

Particular attention should be paid to describing plans, strategies, methods and activities that enable the team to be successful in meeting the community solar project objectives articulated in Section I. The proposed approach should include a robust discussion of:

- the suggested ownership structure and its advantages, benefits and potential challenges;
- project partners, including how tax incentives will be utilized;
- marketing strategy and outreach approach, including benefits and/or incentives that will be returned to community participants;
- elements of replicability that will enable Portlanders and perhaps other communities in Oregon to continue developing community solar projects after the ARRA funds are expended.

Proposers should identify which of the physical site(s) with VIR allocations the project will involve (see Exhibit C and D). Proposals should include a timeline with key milestones and corresponding dates.

## 3. Team Qualifications and Experience

The proposal shall demonstrate the strength of the collaborative partnership, experience in tax equity financing and familiarity with solar ownership models. The proposal must identify which of the team members will take advantage of the federal tax benefits.

Provide a brief biography for each key person on the project team, featuring experience on relevant projects. Please include staff members responsible for quarterly and final reports. List percentage of staff time devoted to the project.

## 4. Budget

The proposal shall include the Proposer's estimated cost to perform the work. This funding opportunity requires a 1:1 match from the Proposer (i.e., the Proposer must match each dollar of grant funding with one dollar of its own resources.) The budget must identify any in-kind, partner funding or other leveraged resources.

The template below is recommended but alternative methods of representing the project budget are acceptable.

### Project Budget

Proposed activity	Cost paid by Proposer	Cost paid by partners	Grant request	Total cost for activity
TOTAL				

## 5. Diversity

BPS is committed to reducing disparities and to advancing diversity, equity and inclusion of historically disadvantaged and underrepresented communities in its work. Please describe

how historically disadvantaged and underrepresented communities will be identified and engaged by the proposed project marketing and outreach approach. A brief discussion of efforts taken to reduce disparities and to advance diversity, equity and inclusion in the regular work of the Proposer(s) is also encouraged.

#### 6. Letters of Support

Please include a signed letter of support from an authorized representative of each member organization comprising the proposal team.

### Section IV. Evaluation Criteria and Review Process

#### Evaluation Criteria

Each proposal shall be evaluated on the following evaluation criteria, weighting and maximum points, as follows:

Criteria	Maximum Score
Cover Letter and Letters of Support	5
Project Narrative Clarity, thoroughness, and demonstrable understanding of project objectives and critical program design elements.	35
Team Qualifications and Experience Capabilities and past experience of the project team. Strength of collaborative relationships.	25
Budget and Use of Resources How well the project will use grant funding and other resources to complete the project within the grant period.	20
Diversity How well the proposer addresses reducing disparities and advancing diversity, equity and inclusion of historically disadvantaged and underrepresented communities.	15
<b>Total Points Available</b>	<b>100</b>

#### Proposal Review Process

An evaluation review committee will be appointed to evaluate the proposals received in accordance with the criteria and point factors listed above.

A short list of Proposers, based on the highest scores, may be selected for oral interviews if deemed necessary. BPS reserves the right to increase or decrease the number of Proposers on

the short list depending on the scoring and whether the Proposers have a reasonable chance of being awarded a contract.

If oral interviews are determined to be necessary, the scores from the written proposals will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the oral interviews if deemed necessary.

All communications shall be through the contact(s) referenced on the cover page of the RFP. At the City's sole discretion, communications with members of the evaluation committee, other City staff or elected City officials for the purpose of influencing the outcome of this RFP may be cause for the Proposer's proposal to be rejected and disqualified from further consideration.

#### Exhibits

- A. Keyes & Fox memos and correspondence
- B. Blue Tree memos
- C. List of VIR sites and additional info about the VIR
- D. Map of VIR Sites
- E. Modified pro-forma
- F. Grant agreement template

### Exhibit C: List of Volumetric Incentive Rate (VIR) Sites and Additional Information about the VIR

The Volumetric Incentive Rate that the City secured for all sites is \$0.374 per kilowatt-hour (kWh), and the maximum system size is limited by the program allocation and site constraints. These sites are located on property in Portland owned by public entities, and their locations, maximum size, and estimated annual generation are listed below.

Site Name	Site Owner	Address	ZIP Code	Capacity (kW)	Annual Production Estimate (kWh)
Southwest Community Center	City of Portland	6820 SW 45th	97219	9.9	9,902
Portland International Raceway	City of Portland	1940 N Victory Blvd	97217	9.9	9,902
Southeast Uplift	SE Uplift	3534 Southeast Main	97214	5	4,482
King School	Portland Public Schools	4906 NE 6th Ave.	97211	9.9	9,902
Buckman Arts Elementary	Portland Public Schools	320 SE 16th Street	97214	9.9	9,902
Oliver P. Lent School	Portland Public Schools	5105 SE 97th Ave.	97266	9.9	9,902
Rieke Elementary	Portland Public Schools	1405 SW Vermont St.	97239	9.9	9,902
Bridger School	Portland Public Schools	7910 SE Market St.	97215	9.9	9,902

All of the above sites have been studied for interconnection voltages and locations, solar resource viability, and preliminary system design in order to file the interconnection application with the respective utilities. All sites have received interconnection approval and are considered viable for PV. This work was performed in December 2011 by EC Company to meet the requirements of the VIR program. A report documenting the site interconnection details will be available to successfully selected Proposers, however there will not be any site visits prior to selection. While all the sites listed above currently have a VIR allocation secured, Proposers should be aware that additional factors such as community support, project visibility, and installed costs may play a role in final project execution. Installations for selected sites must be completed, inspected and commissioned prior to October 14, 2012 in order to receive the VIR.



**Private Sector Partnerships to Finance Community-Supported  
Solar Electric Systems on Public Facilities  
Proposal Presented for *City of Portland***

<b><u>Prepared For</u></b> Andria Jacob City of Portland Bureau of Planning & Sustainability Andria.Jacob@portlandoregon.gov	<b><u>Prepared By</u></b> Stanley Florek CEO, Tangerine Power 999 N. Northlake Way, #301 Seattle, WA 98103 Email: Stanley.Florek@TangerinePower.com
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**Lead proposer:** Tangerine Power  
**Mailing address:** 999 N. Northlake Way #301, Seattle, WA 98103  
**Email address:** Stanley.Florek@TangerinePower.com  
**Phone number:** (425) 891-4001  
**Grant amount requested:** \$100,000  
**Additional funds leveraged:** \$505,000 (5.05:1)  
**Project name:** "Solar for Everyone"  
**Supporters:** Lane Powell, TriLibrium, Northeast Coalition of Neighborhoods, Carbon Concierge, Earth Energy Cooperative at Cascadia Commons, RC Cubed

**Lead Proposer - Organization Summary**

Tangerine Power is a social enterprise that develops community energy projects in partnership with local champions. Our unique financing programs enable communities to purchase financial interests in commercial-scale solar energy arrays. Tangerine Power's customers include Corvallis High School, Edmonds Community Solar Cooperative, Hands On Children's Museum (Olympia, WA), Vashon Solar LLC, and City of Olympia. We maintain close relations with solar financiers and construction vendors who share our dedication to excellence.

**Project Summary**

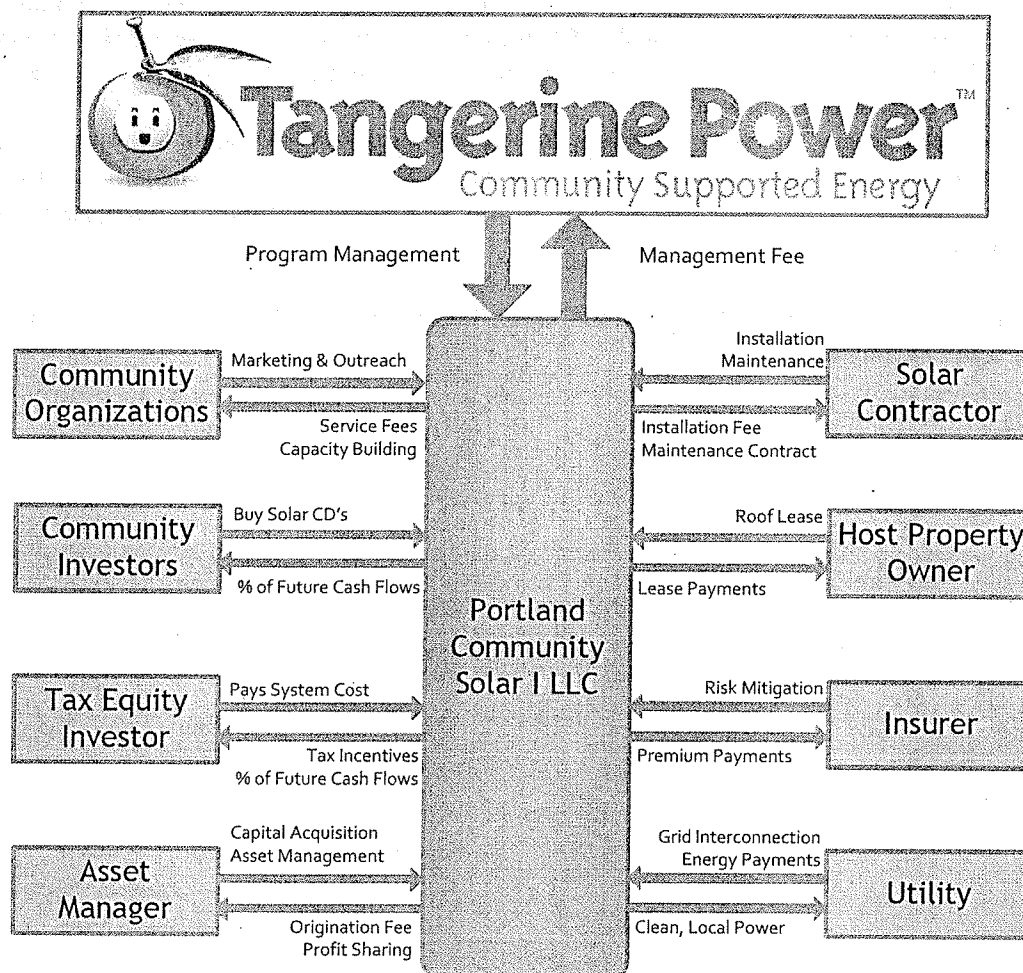
- Tangerine Power's bidding team proposes to develop **all 8** community solar power opportunities available through this City of Portland RFP.
- The solar energy systems will initially be financed by our partner, RC Cubed Inc. through a combination of private investor cash and an operating lease (allowing sale of all tax credits and depreciation in years 1 to 10). RC Cubed brings our team a relationship with City National Bank ("CNB"). CNB has a 5 year history of successfully financing small-to-medium-sized commercial-scale rooftop solar systems.



- All Portland community members will be invited to purchase **Solar CD's** in denominations of \$100 or greater from our partner financial institution(s). These SEC-compliant financial products will feature a market-competitive rate of return. Community member funds invested in the CD's will play a direct role in financing the solar projects contemplated in this RFP. The CD's may be deposited either with our leasing partner or in a cooperating local bank or credit union.
- A variety of **locally-rooted outreach partners led by NE Coalition of Neighborhoods** will be trained in community solar power and financial services basics so they can promote local participation in the program.
- After the financing term is complete, City of Portland will have the opportunity to **purchase the system for its depreciated value.**

If City of Portland agrees to award grant funds to our team, Tangerine Power's team will proceed immediately to negotiate a binding Grant Agreement.

## 1. Proposed Model for Community Supported Solar



### Proposed Participants

Program Manager	<u>Tangerine Power</u>
Local Community Partners	<u>NE Coalition of Neighborhoods, Portland Neighborhood Network, City of Portland BPS, Carbon Concierge, Earth Energy Cooperative at Cascadia Commons</u>
Legal Representation	<u>Lane Powell</u>
Accounting	<u>TriLibrium</u>
Asset Manager	<u>RC Cubed</u>
Electric Utility	<u>Portland General Electric &amp; Pacific Power</u>
Permitting Authority	<u>City of Portland</u>
Host Properties	8 Public Properties in Portland
System Owner	Special Purpose company with working title "Portland Community Solar I LLC"
Tax Equity Investor	A national financial institution with tax credit-based solar finance experience
Community Investor	Portland metro area citizens & businesses buying "Solar CD's"
Solar Contractor	TBD by Competitive RFP that agrees to diversity and community benefit goals

## 2. Project Narrative

**Proposed Ownership Structure:** We will create a special purpose *Limited Liability Company* that will own & operate all 8 solar energy systems on Portland public buildings for 15 years. The LLC will be structured to allow it to pass through all available federal tax benefits and accelerated depreciation to a single financial partner.

At the same time we will create a *Solar CD* purchase agreement between each Solar CD purchaser and the Bank (or potentially a local bank or credit union to be identified). This purchase agreement will specify the terms of each buyer's capital contribution and timeline for their payback. Solar CD proceeds will serve to guarantee payment on the Bank's lease payments and reduce the interest rate on the bank financing. See [this article](#) for an example of a public/private solar project that was financed and constructed in 2011 using this model. A portion of the cash proceeds from VIR payments will be used to supplement the return on capital for Solar CD holders to improve their rate of return above what a standard CD is offering.

**Solar Host Sites:** Tangerine Power proposes to develop all 8 sites proposed in the RFP. This scope reflects two realities driven by the market for solar services. First, we recognize that a larger portfolio of projects will be more attractive to our financial partners and thus will increase the likelihood of completing funding for the projects. Most tax equity investors have a minimum deal size they will undertake and the combined size of all 8 properties offered are on the lower end of these minimums. Second, we will achieve critical economies of scale and benefit from lower prices for installation services and materials, increasing long-term financial return that can be shared with community partners.

If the proposer finds after further investigation that it cannot fund and construct a solar array in a cost effective & timely manner at one or more of the sites, we reserve the option to avoid developing solar at those individual sites.

**Schedule of Tasks:** This list shows major Phases in our community supported energy project. Some phases will be conducted in parallel to reduce total project length to get the solar power system installed.

Phase	Responsible Party	Start Date	Estimated Length
Initiate Project	Proposer + City	Feb 28 <sup>th</sup>	3 weeks
Inspect Sites	Proposer + City	Feb 28 <sup>th</sup>	3 weeks
Lease Sites	Proposer + City	Feb 28 <sup>th</sup>	6 weeks
Acquire Project Financing w/Tax Equity component	Proposer	Feb 28 <sup>th</sup>	2 months
Choose Solar Contractor	Proposer + City + Local Partners	Mar 12 <sup>th</sup>	3 weeks
Sell Community Memberships	Bidder + Partners	Mar 30 <sup>th</sup>	3-6 months
Design Systems & Seek Regulatory Approvals	Contractor	April 1	2 months
Order & Deliver Equipment to Sites	Contractor	June 1	3 weeks
Construct the Solar Power Systems	Contractor	June 25	2-4 weeks

Commission Systems	Contractor	August 15	2-3 weeks
Operations & Maintenance regime	Bidder + Contractor	Ongoing	2x/year

## Marketing & Outreach Plan

Our integrated marketing activities promoting the "Solar for Everyone" Solar CD program will leverage the community trust and volunteer network that the Portland Neighborhood coalitions have built, while creating paid employment opportunities for a core of marketing, outreach, and PR personnel who guide the program. Specific tasks in our plan include:

- An action plan and timeline of promotional activities spread across Portland, coordinated through NECN
- Website with complete information on the program and ability to sign up online or offline
- PR/Outreach Toolkit that can be shared with affiliated organizations – toolkit includes:
  - Messaging for specific audiences
  - Storyline/talking points
  - Media releases that can be shared with press and bloggers
    - Prepared media release(s) for distribution
    - Sample media release format
    - Boilerplate about the organization for inclusion in other organizations' releases
  - Social/electronic media outreach support:
    - Links to key websites and information
    - Images, infographics and supporting texts
    - Sample emails
    - Sample posts for Facebook and other social networks
    - Sample tweets with bit.ly links and #hashtags for Twitter
  - Frequently Asked Questions (FAQ)
  - Sample slide presentations that can be used by other organizations
  - Supply of printed cards, signs, and window decals
- Sponsorships and promotional partnerships through our network of sustainably-minded businesses
- Canvassers at targeted local businesses and door-to-door at residences

## Summary

We end this section by re-visiting the City's objectives in selecting a winning proposal team. We also summarize why our Solar CD + Tax Equity program achieves each objective.

- **City of Portland wants to make solar more accessible to Portland Citizens who can't put it on their own roofs.** Our *Solar CD* program allows anyone to support installation of solar arrays on Portland-area buildings and receive a financial return.
- **Fund solar energy in affordable increments.** We expect our Solar CD to have a minimum purchase of \$100, low enough that the majority of Portland residents can afford to participate in the program if they choose.
- **Demonstrate community supported energy under current rules.** We will use the tax benefits available under federal law and the stream of cash payments from the Oregon Feed in Tariff and to attract a private financier who will fund the capital cost for the proposed solar arrays. Any remaining funding required to secure this

private financing will be provided through return-bearing Solar CD's purchased by the local community members.

- **Provide SEC-Compliant returns to community members who fund solar projects.** Our Solar Certificate of Deposit is FDIC insured, provides above-market rates of return to local savers & investors, and is compliant with SEC regulations.
- **Leverage federal ITC and depreciation benefits.** Our private financing partner will absorb federal solar tax benefits by owning the solar projects during the first 10 years of the agreement.
- **Create a replicable model.** We are partnering with an experienced tax equity investor. Then we turbocharge the investor's confidence in the project by building a cash reserve through Solar CD's that is sufficient to cushion the project from most financial risk. Our program can raise community investment from anyone and deliver financial returns to anyone, while eliminating most restrictions on Securities registration. This business model can be presented to numerous other property owners and FDIC-insured financial institutions doing business here in Oregon.

### 3. Team Qualifications & Experience

**Tangerine Power** is a nationally recognized pioneer in community funding of solar on public facilities. Our SunSlice™ cooperative solar program is mentioned in the appendix to this RFP as one possible model for Portland's program. We are both a turnkey project developer and a consulting resource for community power projects nationwide.

**Stanley Florek, CEO & Founder**, has developed and managed technology-oriented programs for public and private customers for 14 years. His interest in expanding access to clean energy led him to an MBA at the pioneering Bainbridge Graduate Institute for Sustainable Business, with a concentration in Sustainable Energy Solutions. Stanley is actively involved in distributed energy policymaking at the state and federal levels, and co-founded the trade association Washington Local Energy Alliance and national advocacy group Community Power Network.

- Stanley will be responsible for overall Program Management, Grant Administration, Contractor Selection & Oversight, & delivery of Quarterly & Final Reports to the City of Portland.
- Stanley will allocate 75% of his time to this project through completion of Grant obligations.

#### Relevant Community Solar Projects (Click on project name for web link):

[Corvallis High School](#)

[Edmonds Community Solar Cooperative](#)

[Olympia Hands-On Children's Museum](#)

[Vashon Solar LLC](#)

[City of Olympia](#)



**Lane Powell** is a 135-year-old full service law firm based in the Pacific Northwest. We are deeply experienced in serving the legal needs of clean tech companies, which include financing, regulatory compliance, securities issuance, tax incentives for energy projects, and cooperative law. We closely monitor developments at federal, state and local levels relating to tax and other incentives for energy projects.

**David Van't Hof** focuses his practice in the areas of sustainability, clean technology, renewable energy, green building and carbon regulation. David draws experience from his many years as a Sustainability Policy Advisor to Oregon Gov. Ted Kulongoski. In that capacity, he led the state's participation in the Western Climate Initiative and in developing the state's nationally recognized climate change and renewable energy policies. In private practice, David has advised clients on renewable energy, clean technology development and financing as well as complex regulatory matters such as environmental and siting issues.

*David will be a consultant to the project providing legal representation and tax equity structuring guidance.*

**TriLibrium** is a Portland, Oregon based CPA firm, founded in 2008, which breaks the mold of standard Certified Public Accounting firms. They use their experience, skills, education and passion to serve their clients and community, advance ecological restoration and "raise the bar" for the entire accounting profession.

**Brian C. Setzler, MBA, CPA** has over 20 years of business experience in public accounting, consulting, teaching and private industry. His experience includes Big 5 audit and consulting work as well as a significant amount of both corporate and individual tax planning and preparation. Past titles for Brian include Controller and CEO. Brian serves as Associate Faculty at the Bainbridge Graduate Institute where he teaches Finance & Accounting to MBA-level graduate students. He is an instructor to other CPAs on the subjects of sustainability, accounting and advising startup businesses.

*Brian will be a consultant to the project providing accounting, financial modeling, and tax preparation services.*

**Northeast Coalition of Neighborhoods** is a core part of the Portland Community Engagement System. It serves as one of seven district coalitions advancing neighborhood livability through highly inclusive civic engagement. NECN has extensive experience promoting and managing Solarize group purchasing programs for residential properties. Through Community Solar they are seeking to extend the benefits of solar energy to everyone in their neighborhood.

**Paige Coleman** is Executive Director of the NE Coalition of Neighborhoods. Paige has focused on involving all people in the area served by the Coalition. She has deliberately made social equity a strong point of NECN, and helped develop community initiatives, which include the King Farmers Market, Solarize Northeast, Food Share Fund and a community youth hotline. Her advocacy for the underserved communities through the coalition has been unparalleled.

**Gene Lee** is Office Manager at the Northeast Coalition of Neighborhoods. In his role he takes part in numerous initiatives and outreach campaigns that the Coalition operates. Gene has a BA in Sociology from the University of Texas and a Masters of Business Administration from the Bainbridge Graduate Institute.

*Through NECN, Paige & Gene will serve as the gateway to the Portland neighborhood network and voice for local sensibilities during program design. During deployment, NECN will serve as a contracted resource to cross-market the Solar CD through their ongoing Solarize campaign including integration with their PR, written materials, door to door campaigns, and workshops. NECN will also serve as liason to support outreach via the other Portland Neighborhood groups who have solar development opportunities listed in the RFP.*

## **Earth Energy Cooperative at Cascadia Commons**

*Earth Energy Cooperative (EEC) works for building owners to customize energy management solutions that save them money. The Independent Energy Advocates at EEC work with potential customers to assess their energy consumption needs and identify the most cost-effective mix of conservation and renewable energy options. EEC will deliver marketing & outreach to promote the Solar CD product throughout the Portland Metropolitan Area. EEC is a for-profit subsidiary cooperative of Cascadia Commons, a Benevolent Society dedicated to advancing social, economic, and environmental sustainability in the Pacific Northwest. Cascadia Commons receives its Federal Tax exempt status as a member of Cascadia Education Project, a 501(c)(3) umbrella organization.*

**Collin Ferguson** is a native of Estacada, Oregon, Collin earned his BA in Urban Studies at the Edward J. Bloustein School at Rutgers University in New Jersey. Upon returning to Portland, he started the Cascadia Commons Benevolent Society project and, in 2009, became President of the Board at the Cascadia Education Project, a 501(c)(3), which provides Cascadia Commons with tax-exempt nonprofit status. Collin acquired much of his entrepreneurial education from the Six Week Sprint at the Portland Ten (Portlandten.com) and gained vital political experience as a volunteer for the Sam Adams Campaign for Portland's Mayor. Collin brings his experience in business, urban affairs, non-profit development and entrepreneurial activism to his role as an Independent Energy Advocate for the Earth Energy Cooperative.

**Megan Brown** has worked with a number of non-profit and community development organizations throughout the Pacific Northwest, including Habitat for Humanity, the Hawksbill Turtle Recovery Project and Camp Imua (a camp for special needs adults and children). Megan is the Executive Secretary and Co-Founder for Cascadia Commons. Megan is also completing her work at Portland State University where she will earn a Bachelor of Science degree in Community Development, spring of 2012. Megan specializes in bringing neighbors together to define a common need and improve on their quality of life through local interactions and sustainable living practices. She is passionate to bring these skills full time to Cascadia Commons and the Earth Energy Cooperative, where she will provide her project management and community development expertise.

### **Jennifer Newton**

Jennifer Allen Newton has more than 20 years of experience in media and public relations, with a focus on technology, health, environment and quality-of-life. Since founding Bluehouse Consulting Group, Inc. in March 2000, Jennifer has provided strategic public relations counsel, industry analyst relations, training and writing services for a variety of agencies, large and small companies and non-profit organizations. Jennifer's specialty is bringing complex subjects to a broader audience. She has worked with clients and media in a variety of specialized industries, including high-tech, clean-tech, healthcare, food/beverage, biometrics/security, retail, franchising, telco/utilities, manufacturing, publishing and design. An experienced team and project manager, Jennifer collaborates with a network of other independent professionals to provide a range of branding, marketing and communications services.

*Collin and Megan will allocate 100% of their time to this project coordinating the outreach campaign with a team of community partners. Jennifer will provide hourly consulting on PR strategy and execution. The Cascadia Commons team will serve as a contract partner to Northeast Coalition of Neighborhoods during program deployment.*

**Carbon Concierge**, founded in 2007, has worked with companies across the US and Canada to provide tools and resources to business leaders looking to reduce their carbon impact and enhance their corporate citizenship. **Mickey Lee** is the Strategic Director for Carbon Concierge. With a background in media and marketing with an emphasis on environmental and social equity, Mickey provides an avenue for change by engaging business leaders in measurement and reduction strategies for their carbon emissions as well as leadership with corporate social responsibility. Mickey is currently working with Portland's Environmental Professionals of Color to create a database of organizations and businesses that are successfully using sustainable career opportunities to reach out to disadvantaged communities. Mickey is also Vice President of Portland Voice for Oregon Innovation & Sustainability, a "Chamber of Commerce" for sustainable businesses in the Portland area.

*Mickey will provide consulting to the team on her experience managing a solar installation on the Jefferson School in NE Portland, and guide our strategy to gain local business & corporate supporters for our Solar CD product.*

**RC Cubed** is a clean energy finance & renewable energy development firm based in Santa Cruz, CA. The company was founded with the singular mission to seek out opportunities that accelerate the adoption of technologies and services that lower GHG emissions and foster sustainable living. Its focus is applying conventional finance tools to "solarizing" underserved markets including not-for-profit organizations.

**James Rector**, the CEO of RC Cubed, brings decades of experience in business development, corporate finance & marketing of technology and financial products. His past accomplishments include directing business development for Concentric Network from start-up to IPO, developing strategy and funding for several tech companies and marketing and selling enterprise software to financial institutions and fortune 1000 companies. His clients have included ABC News, Wachovia Bank, FOX TV, United Space Agency, Electric Ventures, Sunrise Securities, and Telesoft Ventures. He has successfully raised funds from America's leading Venture Capital firm Kleiner Perkins, as well as top New York investment banks and qualified private investors.

RC Cubed Inc. will deliver solar project tax equity and lease financing via its relationships with private banking groups including City National Bank. It will manage ownership of the LLC over the term of the VIR agreement. It will also take a guiding role in marketing, sales and sales support to our partner teams in Portland promoting the Solar CD product.

*James will allocate 75% of his time to this project during the financing stage and 20% of his ongoing time during the development phase.*

#### 4. Budget

We propose the following budget for optimal deployment of the grant funds to achieve program objectives. These are best estimates based on the project scope outlined in the City's RFP and supplemental materials.

Proposed Activity	Estimated Cost
Engineering feasibility consulting x 8 properties @ \$150/hr	\$13,500
Legal analysis, regulatory opinions, bank negotiation, document preparation @ \$300/hr	\$30,000



<b>Accounting</b> , financial modeling, bank due diligence, tax planning & document Preparation @ \$100-\$150/hr	\$18,000
<b>Marketing</b> , outreach, PR, stakeholder engagement @ \$10-\$80/hr	\$29,500
<b>Program Management</b> , program design @ \$100/hr	\$9,000
<b>Total</b>	\$100,000

We propose to exceed the RFP's requirement 1:1 private matching of the City's grant funds through the option below.

Item	Contribution	Source
Solar lease financing proceeds	\$385,000 for construction & operation of the solar array	Financial Partner (City National Bank)
Community investments	\$100,000 in Solar CD purchases	Portland area community investors
Solar business and technology training delivered to Portland community members	100 hours @ \$100/hr = \$10,000	RC Cubed & Tangerine Power
Pro Bono contribution to Legal Services effort	\$10,000	Lane Powell

## 5. Diversity

The team plans to welcome historically underrepresented community members into our program in the following ways:

- **As marketing team members and outreach workers.** Opportunities for training in solar energy and financial products and paid work as part our outreach program will be provided to members of our partner organizations, creating pathways for underrepresented communities to develop interest and professional connections in these professions.
- **As prospective solar installation service providers.** We will include a provision for diversity inclusion and local training requirements in our RFP for solar installation services for the project.
- **As Solar Savers.** Our Solar CD program will create new opportunities for small savers to participate in financing a solar project and benefitting financially from it.

Our partnership with NE Coalition of Neighborhoods will demand that we pay close attention to that neighborhood's needs in all three of the above areas to ensure a broad set of voices is included in this program.

## ARRA COMPLIANCE REQUIREMENTS

1. **Publication.** Information about the Agreement will be published on the Internet, including the City of Portland's website, <http://www.portlandonline.com/ARRA> as well as on the federal website, [www.recovery.gov](http://www.recovery.gov) maintained by the Federal Recovery Accountability and Transparency Board. The Federal Board may exclude posting contractual or other information on federal website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of Title 5, United States Code. Grantee shall be solely responsible for identifying any information that it believes is confidential in nature, and for seeking to have such information excluded from posting.
2. **Subawards.** GRANTEE shall ensure that the performances rendered under all subawards of ARRA-related funds provided under the Agreement shall be rendered so as to comply with all the terms and provisions of the Agreement as if the performances rendered were rendered by GRANTEE. In entering into any subsequent awards or sub-grants, GRANTEE shall, in addition to other requirements specified in the Agreement:
  - Remain liable for the performance of the terms, conditions of the Agreement and all the exhibits to the Agreement.
  - Provide to the CITY, within fifteen (15) days of contract execution, all sub-grantee names, addresses, telephone numbers, contact persons, contract amounts, and program description of each sub-grant to Agreement.
  - Require that sub-grantees make documents, papers, and records relevant to the work performed available to GRANTEE or the federal Department of Energy (DOE), or their duly authorized representatives, for examination, copying, or mechanical reproduction.
  - Contractually require each sub-grantee to be subject to the examination and audit of records related to the sub-award of ARRA-related funds, and shall require all sub-grantees to retain all financial records, supporting documents, statistical records, evaluation data, program performance data, member information and personnel records related to the sub-grant for a period of five (5) years after:
    - ♦ The submission of the sub-grantee's final expenditure report for the program; and
    - ♦ The resolution of any litigation, claim, negotiation, audit or other action involving those records, if such resolution is after the submission of the sub-grantee's final expenditure report for the program.
  - Notify the CITY in writing within thirty (30) days if GRANTEE suspends or terminates any sub-grant. Additionally, in such notice, GRANTEE shall identify how the suspension or termination may impact the GRANTEE's compliance with its requirements under the Agreement, in terms of budget and project objectives.
  - Provide written notice to each sub-grantee within seven (7) days from the date the CITY terminates or suspends the Agreement.
3. **Limited Use of Funds.** No funding under the Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

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**4. Registration Requirements.** If GRANTEE is registered in the federal Central Contractor Registration database (<http://www.ccr.gov>), GRANTEE will provide the CITY with its CCR registration number and legal name as entered into CCR. If the GRANTEE is not currently registered, it must do so. In order to register in CCR, a valid Data Universal Numbering (DUNS) Number is required. The DUNS Number is assigned by Dun & Bradstreet, Inc. (D&B).

If the GRANTEE is acting as a vendor, it is not required to provide a DUNS Number. Instead the vendor's name and business address are sufficient. Under federal agency interpretations of Section 1512 of ARRA, the characteristics of a vendor (making it distinct from an ARRA sub-recipient) include:

- (1) Providing goods and services within normal business operations;
- (2) Providing similar goods or services to many different purchasers;
- (3) Operating in a competitive environment; and,
- (4) Providing goods or services that are ancillary to the operation of the Federal program.

**5. Reporting Requirements.** GRANTEE shall cooperate with the CITY with respect to the reporting requirements under Section 1512 of the Recovery Act. Cooperation shall include providing information requested by the CITY or by other authorized federal or State authorities related to such reporting requirements. GRANTEE agrees to submit reports to the CITY on financial and programmatic progress by the last day of the reporting quarter. Information from these reports will be made available to the public. GRANTEE must report the following programmatic information:

- status of the project or activity - what has been accomplished during reporting period
- an estimate of the number and types of jobs created or retained by the project or activity.  
If GRANTEE used vendors in project, include direct jobs created or retained by vendor.
- the impact, if any, on its workforce.

GRANTEE shall report performance results consisting of the number of jobs created and jobs retained as a result of the expenditure of ARRA funds. GRANTEE further agrees to provide the CITY with additional financial and programmatic information as required by the Federal Government due to amendments or clarifications by law or regulation.

Reports shall be submitted on a monthly basis, on or before the fifth calendar day of the month. Failure to submit any monthly report by the fifth calendar day shall be deemed noncompliance.

If GRANTEE has previously been contacted regarding noncompliance and is found to have another monthly period of noncompliance, GRANTEE shall be notified in writing that Agreement goals are not being met and that GRANTEE has established a pattern of non-achievement of goals. GRANTEE shall have to meet all goals inclusive to the next one-month period.

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<u>Programmatic and Financial Reporting Periods</u>	<u>Due Dates</u>
July – September	September 30
October – December	December 31
January – March	March 31
April – June	June 30

**6. Accounts, Records and Inspections**

**(a) Accounts.** No part of ARRA funds shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. ARRA funds can be used in conjunction with other funding sources as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance. GRANTEE must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. The system of accounts employed by GRANTEE shall be satisfactory to the CITY and in accordance with generally accepted accounting principles consistently applied.

GRANTEE's separate, distinct set of accounts, records, documents, and other evidence must show and support: all allowable costs incurred; collections accruing to the GRANTEE in connection with the work under the Agreement, other applicable credits, negotiated fixed amounts, and fee accruals under the Agreement; and the receipt, use, and disposition of all Government property coming into the possession of the GRANTEE under the Agreement. GRANTEE is responsible to maintain and may be required to submit backup documentation for all expenditures of funds under the Recovery Act including such items as timecards and invoices. GRANTEE shall provide copies of backup documentation upon CITY's request.

**(b) Inspection and audit of accounts and records.** As work performed under the Agreement will be funded, in whole or in part, with ARRA funds, books of account and records relating to the Agreement shall be subject to inspection and audit by the CITY, the Federal Government, or their designees at all reasonable times, before and during the period of retention provided for in subparagraph (d), and the GRANTEE shall afford the CITY or the Federal Government proper facilities for such inspection and audit.

**(c) Audit of subgrantees' records.** GRANTEE also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subgrantee of any tier, to either conduct an audit of the subgrantee's costs or arrange for such an audit to be performed by the cognizant government audit agency through the CITY.

**(d) Disposition of records.** Except as agreed upon by the CITY, the Federal Government and the GRANTEE, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the GRANTEE in connection with the work under the Agreement, other applicable credits, and fee accruals under the Agreement, shall be the property of the CITY and/or the Federal Government,

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and shall be delivered to the CITY, the Federal Government or otherwise disposed of by the GRANTEE either as the CITY may from time to time direct during the progress of the work or, in any event, as the CITY shall direct upon completion or termination of the Agreement and final audit of accounts hereunder. Except as otherwise provided in the Agreement, all other records in the possession of the GRANTEE relating to the Agreement shall be preserved by the GRANTEE for a period of 6 years after final payment under the Agreement or otherwise disposed of in such manner as may be agreed upon by the Government and the GRANTEE.

**(e) Reports.** GRANTEE shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under the Agreement as the CITY may require from time to time.

**(f) Subcontracts.** GRANTEE further agrees to require the inclusion of provisions substantively the same to those in this Section 6 in all subcontracts (including fixed price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subgrantee.

**(g) Comptroller General, Inspector General.** Pursuant to Section 902 of the Recovery Act, the Comptroller General of the United States and his representatives are authorized to: 1) examine any records of the GRANTEE or any of its subgrantees, or any State or local agency administering such Agreement, that directly pertain to, and involve transactions relating to, the Agreement or subcontract, and 2) interview any officer or employee of the GRANTEE or any of its subgrantees regarding such transactions. Section 1515(a) of the Recovery Act authorizes any representative of the Inspector General of a relevant Federal agency to: (1) examine any records of the GRANTEE and any of its subgrantees, as well as the grantee or any State or local agency administering the Agreement, that pertain to, and involve transactions relating to, the Agreement or subcontract; and (2) interview any officer or employee of the GRANTEE, grantee, subgrantee, or agency regarding such transactions.

**(h)** Pursuant to the regulations promulgated at 2 CFR Part 176, detailed information required by the Federal Funding Accountability and Transparency Act of 2006, as amended (the "Transparency Act") the GRANTEE may be required to provide additional information. This information includes, but is not limited to the items listed below. GRANTEE shall provide any information required by the CITY to meet this obligation.

1. The name of the entity receiving the award;
2. The amount of the award;
3. The transaction type;
4. The funding agency;
5. The Catalog of Federal Domestic Assistance number;
6. The program source;
7. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
8. The location of the primary place of performance under the award, including four

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- data elements for the city, State, Congressional district, and country;
9. A unique identifier of the entity receiving the award;
  10. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
  11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.

**7. Whistleblower Protection**

(a) GRANTEE can not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

- gross mismanagement of an agency Agreement or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency Agreement (including the competition for or negotiation of a Agreement) or grant, awarded or issued relating to covered funds.

(b) Section 153 of the Recovery Act requires that GRANTEE, as a non-federal employer receiving ARRA funds, must post a notice of ARRA Whistleblower rights and remedies at all Recovery Act job sites. Copies of the notices may be obtained from these federal websites:

<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower%20Poster.pdf>

<http://www.recovery.gov/Contact/ReportFraud/Documents/RecoveryAct%20FraudHotlinePoster-RATBLogo.pdf>

(c) GRANTEE shall include the substance of this Section 7 in any subgrants or subcontracts.

(d) Non-enforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration. Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this Section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

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8. **False Claims.** GRANTEE shall promptly refer to the CITY for transmission to the funding federal agency or other appropriate Inspector General any credible evidence that a principal, employee, agent, GRANTEE, subgrantee, subgrantee or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

9. **ARRA Signage.** Any publicity regarding this project shall indicate, as may be appropriate, that funding was made possible by a grant from the federal government through ARRA appropriated funds. The forms of any required ARRA signage will be provided to GRANTEE by the CITY.

10. **Wage Rates**

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by GRANTEES and subgrantees on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA must be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See 2 CFR §§176.80 et seq. See also <http://www.dol.gov/esa/whd/Agreements/dbra.htm> (Davis Bacon).

(b) GRANTEE agrees that all laborers and mechanics working on the project funded in whole or in part by ARRA funds will be paid the higher of either the Oregon prevailing wage or the federal prevailing wage. The Oregon general prevailing wage rates are determined by the Wage and Hour Division of the Oregon Bureau of Labor and Industries, while the federal general prevailing wages are determined by the Secretary of Labor under the Copeland Act. If the state and federal wage rate determinations differ, the highest of the two rates will prevail. GRANTEE shall cause copies of the wage determination and the Davis-Bacon poster to be posted at job sites in prominent and accessible places where workers may easily see the posters.

11. **Buy American**

(a) General Requirement. Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA), prohibits the use of funds appropriated for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States (the "Buy American Requirement"). The Rules and Regulations implementing the Buy American Requirement may be found in the Federal Register, Vol. 74, No. 77 (April 23, 2009), 2 CFR Part 176, § 176.60, *et seq.*

(b) Exceptions. The Recovery Act exempts the following from the Buy American Requirement:

(1) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. (2 CFR § 176.70(a)(2)(i).)

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(2) There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the Project, as long as the manufacturing occurs in the United States. (2 CFR § 176.70(a)(2)(ii).)

(c) Waivers. Unless otherwise specifically noted in the Agreement Documents, GRANTEE shall bid and perform the Work assuming the applicability of the Buy American Requirement. The Federal department or agency granting the ARRA funds for this Project may waive the Buy American Requirement only upon a finding that:

(1) applying subparagraph (A) would be inconsistent with the public interest (2 CFR §176.80(a)(1);

(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (2 CFR § 176(a)(2)); or

(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent (2 CFR §176(a)(3)).

Application for a waiver under the ARRA Buy American Requirement may only be made by the CITY as the recipient of ARRA funds. In the event during the course of the Agreement GRANTEE believes there to be proper basis for a waiver, GRANTEE may submit a request for a waiver to the Grant Manager. The request shall include copies of all documentation verifying the unavailability of the material or product, and/or justification of the application for a waiver. Only the Federal funding agency may grant the application. Unless the conditions upon which the request is based were unforeseeable at the time of bid, any delay to the completion of the Project caused by the application for a waiver shall be considered an avoidable delay by the GRANTEE.

**12. Certification for Infrastructure Projects.** With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, must certify by acceptance of the award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

**13. ARRA Indemnification.** GRANTEE shall be solely liable for any breach by GRANTEE of federal statutes, rules, program requirements and grant provisions applicable to ARRA funds provided to GRANTEE under the Agreement to the extent that the CITY has informed GRANTEE on such applicable ARRA Requirements. If the CITY is required to return, reimburse or otherwise pay any ARRA funds under the Agreement, whether to the State or the federal government, related to or arising from GRANTEE's breach of any such ARRA Requirements, to the extent that the CITY has informed GRANTEE on such applicable ARRA Requirements, GRANTEE shall hold harmless and indemnify the CITY for amounts equal to the



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ARRA funds that the CITY is required to pay to the State or the federal government. GRANTEE further understands and agrees that it shall be liable for any costs disallowed pursuant to any financial or compliance audit(s) of GRANTEE regarding the Agreement. GRANTEE further understands and agrees that reimbursement of such disallowed costs shall be paid by GRANTEE from funds that were not provided or otherwise made available to GRANTEE pursuant to the Agreement or under any federal contract.

**14. Effect of Changes in Federal and State Laws.** Any alterations, additions, or deletions to the Agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this without written amendment to the Agreement and shall become effective on the date designated by such law or regulation. The Recovery Accountability and Transparency Board periodically publishes Information Bulletins to release, update, amend or clarify grants and programs which it administers. Information regarding releases and information regarding ARRA funds can be accessed at <http://www.recovery.gov/> and are incorporated by reference into the Agreement as if set forth herein.

**15. Lobbying Restrictions.** By accepting funds under the Agreement, GRANTEE agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation. GRANTEE agrees that no portion of federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. GRANTEE shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Pursuant to Section 18 of the Lobbying Disclosure Act, GRANTEE affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. GRANTEE shall execute a Lobbying and Litigation Certificate, to be provided by the CITY, and submit the executed certificate to the CITY on or before December 31, 2013.