

**EXHIBIT A**

185530

**ENERGY SERVICES AND LICENSE AGREEMENT**

**Dated as of \_\_\_\_\_, 2012**

**Between**

**PORTLAND COMMUNITY SOLAR, LLC**

**and**

**CITY OF PORTLAND, OREGON**

## ENERGY SERVICES AND LICENSE AGREEMENT

This Energy Services and License Agreement (the "**Agreement**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("**Effective Date**") by and between **Portland Community Solar, LLC**, an Oregon limited liability company ("**Service Provider**"), and **City of Portland, Oregon**, an Oregon Municipal Government under the laws of the State of Oregon ("**Customer**"). Service Provider and Customer are sometimes individually referred to as "**Party**" and collectively as the "**Parties**."

### RECITALS

WHEREAS, Customer is the owner of certain real property in Portland, Oregon, more particularly described in Exhibit A (the "**Premises**") upon which there is erected facilities (the "**Building**"), upon which Service Provider will install, own, operate, and maintain a Solar Facility (as hereinafter defined);

WHEREAS, Service Provider or its employees, contractors, or agents designs, installs, owns, operates and maintains equipment that produces electricity from solar energy;

WHEREAS, Service Provider desires to sell, and Customer desires to purchase, electricity generated from a solar photovoltaic generation facility ("**Solar Facility**") to be installed, operated, and maintained by Service Provider, and to be located on the Premises;

WHEREAS, Customer has qualified for Portland General Electric's or Pacific Power's ("**Utility**") Solar Photovoltaic Pilot Program (the "**Program**") and has submitted an application for a "Solar Photovoltaic Pilot Program and Interconnection Services Agreement: Net Metering Option" ("**Interconnection Agreement**") with Utility which is attached to this Agreement and incorporated by reference;

WHEREAS, Customer desires to engage Service Provider as its exclusive provider to the Premises of electricity generated by solar power under the Program; provided however, that Customer may engage other solar installers to install solar photovoltaic generation facilities on Customer's Premises to the extent such activity does not interfere with or violate any of the terms of the Agreement or the Interconnection Agreement;

WHEREAS, Customer, as owner of the Premises (Customer in such capacity being herein called the "**Property Owner**") desires to provide Service Provider with a license to use a portion of the Premises to install, locate, own, operate, maintain, improve and replace the Solar Facility;

WHEREAS, The Solar Facility will produce a portion of the electricity used at the site, which will be offered to Customer at a discount of ten percent from the utility rate applicable for the site;

WHEREAS, Customer will not be required to contribute any capital to the project, and the Customer will not be required to maintain or operate the system, or pay for any equipment replacement costs; and,

WHEREAS, Service Provider will hire the installer and oversee the installations. Once the systems are operational, the Service Provider will maintain the installed systems. At the end of the 15 year agreement, the City will have three options: renew the agreement, have the systems removed and the building returned to original condition, or purchase the system for fair market value.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

## **ARTICLE 1 PURCHASE AND SALE OF SOLAR ELECTRICITY**

### **Section 1.1 Solar Electricity**

Beginning on the Operations Commencement Date, Customer will purchase all Solar Electricity (which term and other capitalized terms used in this Agreement are defined in Appendix 1 attached hereto and made a part hereof or elsewhere herein) supplied by the Solar Facility and whether or not Customer uses such Solar Electricity.

### **Section 1.2 Interconnection Agreement**

As provided for in the Interconnection Agreement, Customer has assigned its right to payment from Utility to Service Provider for the solar electricity generation ("**Solar VIR Payment**"). Service Provider and Customer agree that they will perform their obligations under this Agreement in a way that is consistent with requirements set out in the Interconnection Agreement. During the Term, Service Provider also shall be responsible to perform any of the obligations attributable to Customer set out in the Interconnection Agreement, and Customer shall cooperate with Service Provider and will not impede the performance of any such obligations under the Interconnection Agreement.

### **Section 1.3 Energy Charges**

Pursuant to the assignment referred to in Section 1.2, Utility will pay Service Provider a monthly payment as detailed in Exhibit C. Customer shall also make quarterly payments to Service Provider as provided for in Exhibit C, and described in Article 8.

## **ARTICLE 2 TERM**

### **Section 2.1 Term**

The initial term of this Agreement shall commence on the Effective Date and conclude on the fifteenth (15) anniversary date of the Operations Commencement Date ("**Term**").

## Section 2.2 Purchase Options

Customer is hereby granted, at the end of the initial term of this contract, (1) the option to purchase all, but not less than all, of the Solar Facility then covered by this Agreement for a cash purchase price equal to the then Fair Market Value of such Solar Facility (the "**Purchase Option**"); or (2) the option to enter into a new energy services agreement to be negotiated by the Parties (the "**ESA Option**"). As used herein, "**Fair Market Value**" shall be determined by Service Provider and Customer, or if they are unable to agree, by an independent appraiser, on the basis of, and shall be equal to, the value which would be obtained in an arm's length sale transaction between informed and willing parties for the Solar Facility equipment on an uninstalled basis, in as-is condition, neither party being under any compulsion to buy or to sell. To exercise this purchase option: (a) no Event of Default on the part of Customer shall have occurred and be continuing; (b) this Agreement shall not have been previously terminated; and (c) Customer must give Service Provider written notice of its intent to exercise the Purchase Option, which notice must be given no less than six (6) months prior to the end of the Term. Any purchase of the Solar Facility pursuant to the Purchase Option or purchase of power from the Solar Facility pursuant to the ESA Option, shall occur on the day following the last day of the Term, or on such other date as the Parties may mutually agree in writing. The foregoing notwithstanding, the Purchase Option may be exercised by Customer by ten (10) days notice to Service Provider upon the earlier termination of the Term hereof, except on a termination of this Agreement by Service Provider in accordance with Section 9.1 hereof upon an Event of Default by Customer.

## Section 2.3 End of Term

Upon the end of the Term of this Agreement, and in the event that the Purchase Option has not been exercised, Service Provider shall elect, by written notice to Customer, to either remove the Solar Facility from the Premises under the rules of section 5.1 of this agreement or abandon the same and transfer it to Customer. Such written notice shall be provided at least thirty (30) days prior to the end of the term; provided further, however, that Service Provider may only elect to abandon the Solar Facility without consent of the Customer if the Solar Facility operates at least at sixty (60) percent efficiency level as compared to the first year of operation. If the Solar Facility does not operate at least at sixty (60) percent efficiency, then Service Provider may only abandon the Solar Facility with written consent from Customer. If the Solar Facility operates at less than sixty (60) percent efficiency, Service Provider shall have the opportunity to upgrade the performance of the Solar Facility to at least sixty (60) percent efficiency in order to abandon it. If Service Provider elects to remove the Solar Facility, Customer may exercise the Purchase Option by written notice to Service Provider given within ten (10) days of receipt of Service Provider's notice of its election.

## ARTICLE 3

### GRANT OF LICENSES; CERTAIN OBLIGATIONS OF THE PARTIES

#### Section 3.1 Grant of License

Customer grants the following licenses to service provider and shall receive annual payments from service provider of one dollar (\$1) as consideration for the licenses, on the terms and conditions set forth below:

- (a) a license to install, locate, own, operate, maintain, improve and replace a Solar Facility on the roof of the Building and to make such penetrations in the roof and the roof structure so as to secure the Solar Facility and to run wires and conduit from the Solar Facility to the electrical panel and other areas necessary for the construction of the Solar Facility within the Building, and
- (b) a license for solar access such that Customer will not construct facilities or plant trees or vegetation of any type or allow any trees or other vegetation on its property to grow in a manner, and will not initiate or conduct activities, that may adversely affect the Solar Facility's full and free exposure to sunlight during daylight hours; and
- (c) a license, including right of access over the Premises and to the Solar Facility rooftop site, and to the interior of the Building for the purpose of carrying out Service Provider's obligations under this Agreement, including, planning, installing, operating, maintaining, inspecting, improving and replacing the Solar Facility and planning, installing, operating, maintaining, inspecting, improving and replacing any Interconnection Facilities.

Service Provider shall make such annual payments on the anniversary date each year of the execution of the Agreement as illustrated in Article 8 & Exhibit C. The annual payment shall continue for 15 years or until exercise of the Purchase Option or of early termination under this Energy Services Agreement, whichever is sooner.

#### **ARTICLE 4**

#### **OPERATION AND MAINTENANCE OF THE SOLAR FACILITY**

##### **Section 4.1 General Responsibilities of Service Provider**

4.1.1 Service Provider shall, at its sole expense, purchase and provide all equipment, materials, supplies and labor for and construct, install, own, operate, maintain and repair the Solar Facility in accordance with all laws and regulations of any applicable Governmental Authority, the Interconnection Agreement, Chapter 860, Division 84 of Oregon Administrative Rules, and the provisions of this Agreement. The Parties acknowledge that Service Provider must complete the Solar Facility by October 14, 2012 as required under the Interconnection Agreement, or a later date, should such an extension of the deadline under the Interconnection Agreement be approved by the Public Utility Commission.

4.1.2 Service Provider shall be permitted to use subcontractors or agents to perform any of its obligations under this Agreement, provided however that the use of such third parties shall not relieve Service Provider of its obligations and responsibilities hereunder, and Service Provider shall be responsible for the actions and performance of

such third parties. Service Provider's choice of subcontractors shall be subject to Customer's advance approval, which approval will not be unreasonably withheld.

4.1.3 Service Provider shall obtain all necessary Approvals and Permits, and pay all permit fees required in connection with its activities under this Agreement. Prior to obtaining any Approvals and Permits, Service Provider shall receive written consent from Customer of the design of the system, and such consent shall not be unreasonably withheld.

4.1.4 Service Provider will install the Solar Facility in accordance with all of the terms and conditions of this Agreement. Except for the obligations of Service Provider under this agreement, if damage is caused to the Building by Service Provider or its employees, agents, or contractors in connection with the installation, operation, maintenance, improvement or replacement of the Solar Facility, Service Provider shall be responsible for the repair of such damage to Customer's satisfaction within 30 days of discovery of the damage. Service Provider's responsibility shall be limited to the repairing of the portion of the building exterior that was penetrated during construction of the Solar Facility. This roofing and structure will be restored to a condition functionally comparable to its condition upon beginning construction. Customer will cooperate with Service Provider in temporarily relocating the Solar Facility during those periods that the roof is being repaired or replaced unless such repair or replacement is due to damage from Service Provider planning, installing, operating, maintaining, inspecting, improving or replacing the Solar Facility.

4.1.5 Service Provider shall provide Customer with Solar Facility production data on each invoice submitted, or permit Customer or Customer's authorized agent to access such data via an internet connection or physical inspection of the production meter.

4.1.6 It is understood by the Parties that the project under this Agreement shall be treated as a public works project subject to the prevailing wage rate and other requirements of the Oregon Bureau of Labor and Industries ("**BOLI**"). Service Provider shall comply with and require its subcontractors to comply with the prevailing wage rate and other BOLI requirements pursuant to ORS 279C.800 through 279C.870 and the administrative rules of BOLI.

4.1.7 Liens. Service Provider shall pay when due all claims for labor and materials furnished, or alleged to have been furnished, to, for, or on behalf of Service Provider in connection with any work on the Premises that may be secured by any mechanic's or materialman's liens against any interest in the Premises. Service Provider shall promptly cause any such liens that do attach to the Premises to be discharged or bonded.

## **Section 4.2 General Responsibilities of Customer**

4.2.1 Customer shall reasonably assist and cooperate with Service Provider, at no cost to Service Provider, and provide any information reasonably requested by Service Provider in the fulfillment of the conditions precedent contained in Section 9.1 and in obtaining any required Approvals and Permits to install the Solar Facility.



Provider shall provide advance notice, by telephone or otherwise, and consult with Customer regarding any Scheduled Outage periods. Service Provider shall not perform activity outside mutually agreed upon times unless otherwise approved in advance by Customer.

#### **Section 4.4 Interruption of Service – Unscheduled Outages**

In the event of an Unscheduled Outage, Service Provider will use reasonable efforts to respond within one business day following notification either by Service Provider's remote monitoring systems or by Customer of such Unscheduled Outage and will effect such repairs as soon as reasonably possible to restore the Solar Facility to operation.

#### **Section 4.5 Rules of Use**

Service Provider shall at all times comply with the following rules and policies of Customer:

- (a) Identification. Any person performing work on the Premises for Service Provider shall wear Service Provider-issued identification badges at all times, including the company name. In addition, all such persons shall carry photo identification, as well as any Customer-required identification, and will present such to anyone on request. Service Provider shall bear the entire cost of producing and assigning such identification.
- (b) Check-in Required. Each day of work Service Provider shall check in at the main reception desk at the building where the Solar Facility is to be installed.
- (c) No Smoking. Smoking or other use of tobacco is prohibited on the Premises.
- (d) No Drugs or Alcohol. Customer's Premises are designated drug and alcohol-free zones.
- (e) No Weapons or Firearms. Except as provided by Oregon statutes and Customer policy, weapons and firearms are prohibited on the Premises.
- (f) Confidentiality. Service Provider will not disclose any information or records regarding Customer clients or employees (including students and their families in the case of schools) that Service Provider may learn or obtain in the course and scope of Service Provider's performance of this Agreement.

### **ARTICLE 5 REMOVAL OF SYSTEM**

#### **Section 5.1 Removal of Solar Facility; Transfer of Ownership**

5.1.1 In the event Service Provider is to remove the Solar Facility pursuant to this Agreement, Service Provider shall sever, disconnect, and remove the Solar Facility and all other Service Provider Property from the Premises and Service Provider shall be liable for damage to the Building or the Premises caused by such removal or by the negligence of Service Provider during said removal. Service Provider may abandon in place conductors between the roof and



the electrical room, and any other components installed within finished walls of the Building, provided any conductors are properly terminated so as not to conduct electricity or compromise the thermal integrity of the Building shell. At its election, Customer may perform or contract for the removal, repair and restoration and bill Service Provider for the reasonable costs incurred, if Service Provider shall fail to do so. All removal, repair and restoration shall be at Service Provider's sole expense, except when the termination of this Agreement was due to an uncured default by Customer.

5.1.2 In the event Customer elects to exercise the Purchase Option or Service Provider elects to abandon the Solar Facility at the end of the Term, Service Provider shall execute and deliver to Customer a bill of sale or other instrument reasonably requested by Customer to convey, transfer, or assign the Solar Facility to Customer. The Solar Facility shall be conveyed free of any liens or claims of any kind or nature. The Solar Facility shall be in good condition and repair and in the case of abandonment, be operating at least at sixty (60) percent of the efficiency as compared to the first year of operation of the Facility. All repairs to the Solar Facility required by this Agreement or the Energy Services Agreement shall be made prior to such conveyance. Service Provider shall also assign to Customer any manufacturers or other warranties pertaining to the Solar Facility or the installation thereof.

## **ARTICLE 6**

### **METERING**

#### **Section 6.1 Metering Devices**

Pursuant to the Interconnection Agreement, Utility shall install, own, operate and maintain any and all meters on the utility side of the Customer's consumer meter.

## **ARTICLE 7**

### **QUIET ENJOYMENT**

#### **Section 7.1 Quiet Enjoyment**

Service Provider shall have exclusive physical possession and control of the Solar Facility except in the event of an emergency or as otherwise provided in this Agreement. Customer covenants and agrees that Service Provider, provided it remains in compliance with its obligations under this Agreement, shall lawfully and quietly have the non-exclusive right to hold, occupy and enjoy the Solar Facility and the appurtenant rights thereto in accordance with the terms hereof throughout the entire term of this Agreement free from any claim of any entity or person of superior title thereto without hindrance to, interference with or molestation of Service Provider's use and enjoyment thereof, whether by Customer or any of its agents, employees or independent contractors or by any entity, person or persons having or claiming an interest in the Solar Facility; provided however, that Service Provider shall not initiate or conduct activities that may damage, impair or adversely affect Customer's machinery and facilities such as HVAC equipment and operation and maintenance thereof. Without limiting the foregoing, Customer agrees that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar Facility and the operation and maintenance thereof. Notwithstanding this paragraph, Customer reserves the right to exercise in

accordance with law its power of eminent domain with respect to the licenses and related interests created hereby, subject to its obligation to pay just compensation as required by law.

## ARTICLE 8

### BILLING AND PAYMENT

#### Section 8.1 Quarterly Billing

The payment for electrical energy generated by the Solar Facility ("**Energy Charge**") will be a dollar amount calculated pursuant to Exhibit C. Service Provider shall send quarterly invoices to Customer for the Energy Charge ("**Invoice**"). All Invoices shall reference the period of generation for which the Customer is being invoiced ("**Billing Period**") and show the amount of Solar Electricity provided to the Premises, the applicable Utility and Service Provider Energy Rates, the Energy Charge, any credits due to the Customer as described in Exhibit C, and the amount owed by Customer to Service Provider.

#### Section 8.2 Payment

Customer shall make payments in accordance with the dollar amount calculated pursuant to Exhibit C within thirty (30) days after receipt of Service Provider's Invoice. Any payment not made within such thirty (30) day period will bear interest from the date payment was originally required to be made at the lesser of the rate of two-thirds of one percent (0.66%) per month or the maximum amount permitted by law and may, at Service Provider's option, be declared an Event of Default under this Agreement on the part of Customer.

#### Section 8.3 Disputed Payments

In the event of a good faith dispute between the Parties as to the Energy Charge or an invoice, Customer shall pay the undisputed portion of the invoice pursuant to the terms of this Agreement notwithstanding such dispute. Any further payments due as a result of the resolution of a dispute shall be added to the payment of the next Invoice. Any overcharge to or overpayment by Customer will be deducted by Service Provider from the next Invoice.

#### Section 8.4 Incentives and Green Attributes

Any grants, incentives, rebates, tax credits, reduced rate financing, or other assistance or benefits available for projects similar to the Solar Facility, from federal, state, and local governmental authorities, utilities or other entities shall inure to the benefit of Service Provider. The Parties acknowledge that Utility shall own any green attributes including solar renewable energy certificates (RECs) and any other environmental attributes for all Solar Electricity produced by the Solar Facility.

**ARTICLE 9**  
**CONDITIONS PRECEDENT**

**Section 9.1 Conditions Precedent to Customer's and Service Provider's Obligations**

Service Provider's and Customer's obligations under this Agreement shall be subject to the satisfaction of all of the following conditions precedent:

9.1.1 Service Provider shall receive in a form reasonably satisfactory to Service Provider: (i) all necessary licenses and access rights; (ii) all Incentives and Approvals and Permits; and (iii) any other documents necessary for either Party's performance under this Agreement. Service Provider will at its sole expense obtain third party verification by a licensed professional engineer of the structural integrity of the Premises.

9.1.2 Service Provider reasonably satisfies itself that the transactions contemplated hereunder (i) will not violate any Environmental Laws and Requirements; and (ii) will not jeopardize Service Provider's or the Solar Facility's status as a Qualified Solar Power Generation Facility that meets the operating and efficiency standards, ownership criteria, and other requirements of the Public Utility Regulatory Policies Act, the Oregon Public Utilities Commission, and any other applicable law.

9.1.3 Upon completion of construction, Service Provider shall provide a training of Customer personnel, to be selected by Customer, on how the Solar Facility works and best practices for when Customer personnel access the Building roof to avoid damage to the Solar Facility.

**Section 9.2 Good Faith Efforts to Fulfill Conditions; Termination for Failure to Satisfy Conditions Precedent**

Customer and Service Provider each covenant and agree that they will use commercially reasonable good faith efforts to fulfill the conditions precedent set forth in Article 9. In the event the conditions precedent are not fulfilled on or before **October 14, 2012**, then either Party may terminate this Agreement by giving ten (10) days' written notice of such termination to the other Party, whereupon this Agreement shall terminate effective as of the date set forth in such notice and neither Party shall have any further liability hereunder.

**Section 9.3 Termination by Service Provider for Failure to Receive Delivery of Solar Modules**

In addition to the termination rights set forth above, Service Provider shall have the right to terminate this Agreement with no further liability to Customer if all of the solar modules required to complete the installation of the Solar Facility have not been delivered to Service Provider prior to **October 14, 2012**. In the event of such termination by Service Provider, Customer may elect to restore the roof to its pre-existing condition and obtain reimbursement for the reasonable cost from Service Provider. In the alternative, Customer may demand that Service Provider restore the roof to its pre-existing condition at Service Provider's expense. Upon termination, Customer shall have no further liability to Service Provider.

#### **Section 9.4 Mutual Termination by the Parties**

Service Provider and Customer, by mutual written agreement, may terminate this Agreement at any time and neither Party shall have any further liability hereunder, except as otherwise agreed in the termination agreement, and except for survival of indemnity obligations under Article 16 hereof.

### **ARTICLE 10 EVENTS OF DEFAULT**

#### **Section 10.1 Events of Default**

Each of the following shall constitute an “**Event of Default**” under this Agreement:

10.1.1 The failure by either Party to fulfill any of its material obligations under this Agreement (including, without limitation, in the case of Customer, Customer’s failure to make payments for any invoices received, or in the case of Service Provider, Service Provider’s failure to maintain the Solar Facility in accordance with this Agreement).

10.1.2 The commencement by either Party of a voluntary case of bankruptcy or insolvency, or the consent of either Party to the appointment of, or taking possession by, a bankruptcy trustee or similar official of any substantial part of its properties or assets, or the making of any general assignment for the benefit of its creditors.

10.1.3 The issuance by a Court of competent jurisdiction of a decree for relief in respect to either Party in an involuntary case under any applicable bankruptcy or insolvency law which remains unstayed and in effect for a period of one hundred and twenty (120) consecutive days.

10.1.4 A closure of or cessation of operations at the Premises that results in a cessation of electrical consumption at the Premises, except for temporary periods when school classes are not in session, during renovations, or following a casualty.

#### **Section 10.2 Opportunity to Cure Default**

In the event of any default occurring pursuant to Sections 8.1.1 or 8.1.4, the non-defaulting Party shall provide written notice of the Event of Default to the defaulting Party. Either Party shall have an opportunity to cure any Event of Default set forth in Section 8.1.1 or 8.1.4 by remedying said Event of Default within sixty (60) days from receipt of notice of default from the non-defaulting Party.

## ARTICLE 11 REMEDIES UPON AN EVENT OF DEFAULT

### Section 11.1 Remedies of Service Provider

In the event of default by Customer which is not timely cured, Service Provider may, without an election of remedies and in addition to any other remedies provided in this Article 9 or elsewhere in this Agreement:

11.1.1 Exercise all remedies available at law or at equity; and/or

11.1.2 Terminate this Agreement upon ten (10) days written notice to Customer, remove the Solar Facility within one hundred twenty (120) days of such notice, whereupon Customer shall be liable to Service Provider for the following amounts: (a) the actual cost incurred by Service Provider to remove the Solar Facility and Service Provider Property from the Premises; plus (b) the Termination Fee as provided in Exhibit E. The parties acknowledge that the Termination Fee constitutes negotiated damages, and not penalties, payable in lieu of the Service Provider's anticipated revenues during the remaining VIR contract term. The parties agree that the negotiated amounts reflect their mutually acceptable estimates of what the Service Provider's actual damages would be, in accordance with Customer's rights and obligations under this Agreement.

All payments required to be made by Customer pursuant to this Section 11.1.2 shall be paid by Customer in full within sixty (60) days after Service Provider delivers notice to Customer of the amount due.

### Section 11.2 Remedies of Customer

11.2.1 General Remedies. In the event of default by Service Provider which is not timely cured, Customer's sole remedies shall be (i) to terminate this Agreement and require Service Provider, at Service Provider's sole expense, to remove all Service Provider Property from the Premises in the manner required under this Agreement, and return the Premises to the reasonably same condition before this Agreement was entered into, ordinary wear and tear and casualty damage excluded; (ii) to cure the default, pursuant to Section 8.2 above; the cost of cure incurred by Customer shall be reimbursed to Customer by Service Provider within ten (10) days after Customer's billing to Service Provider; (iii) to exercise the Purchase Option within thirty (30) days after the default has occurred, with the Fair Market Value reduced by the reasonable cost to cure the default; (iv) to sue for damages or for equitable relief, to the extent allowed under Oregon law, but subject to Section 14.2, below.

11.2.2 Emergency Remedy. In the event that Service Provider's default jeopardizes the immediate operational capability of the Building, or is a danger to life, safety or health (collectively an "emergency event"), Service Provider shall cure the default as specified by Customer as soon as possible and within three (3) hours of receipt of oral or written notice of the emergency event. Failing to do so in a timely manner, Service Provider shall be liable to Customer for any form of resulting damage and Section 14.2, below,

shall not apply. If Service Provider fails to respond timely to an emergency event, Customer may elect to cure the default with the cost of cure to be reimbursed by Service Provider within ten (10) days after Customer's billing to Service Provider.

### **Section 11.3 No Waiver**

No waiver of any default by either Party shall be construed as a waiver of any subsequent default and the failure to exercise any right or remedy hereunder shall not waive the right to exercise such right or remedy thereafter.

## **ARTICLE 12 INSURANCE**

### **Section 12.1 Insurance Requirements**

Throughout the Term, Customer (unless Customer is self-insured) and Service Provider shall maintain the insurance coverage specified on Exhibit D hereto. A certificate of insurance evidencing the required coverage shall be provided to Customer or Service Provider upon request. Each Party shall name the other Party as an additional insured and loss payee on all physical damage insurance policies and an additional insured on all liability insurance policies, unless Customer is self-insured. If Service Provider is self-insured with respect to any required insurance coverage, Service Provider shall provide to Customer documentation of Service Provider's self-insurance program. If Customer is required as a condition of an agreement with a utility to add the Utility as an additional insured, Customer agrees to provide this insurance coverage to the Utility, unless Customer is self-insured.

### **Section 12.2 Insurance Coverage Requirements**

**12.2.1 When Required.** Before Service Provider or any of its contractors or subcontractors enters the Premises, and before Service Provider performs any construction or installation work on the Premises, Service Provider, its contractors and its subcontractors shall provide, at their own cost and expense, the insurance specified by this Article 12. Said insurance coverage to be provided by Service Provider shall remain in full force during the Term.

**12.2.2 Evidence of Coverage.** Service Provider and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, Portland Parks and Recreation, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to Customer at or before execution of this Agreement and then annually for the duration of the Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the Buyer [can we provide seven days to cure?].

**12.2.3 Notice of Cancellation, Reduction or Material Change in Coverage.** The insurance policy shall provide that the insurance shall not terminate or be materially

changed without thirty (30) days written notice first being given to Customer. Notices shall be sent to the Bureau of Planning and Sustainability, 1900 SW 4<sup>th</sup> Avenue, Suite 7100, Portland, OR 97201. If the insurance coverage is canceled, terminated, or reduced prior to the end of the Term, Service Provider or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. Service Provider and its contractors shall maintain continuous, uninterrupted coverage for the duration of the Term.

#### 12.2.4 Types and Amounts of Required Coverage.

- (a) Service Provider and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the Service Provider and Customer and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Service Provider work under this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Service Provider and its contractor or subcontractors, if any. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. However, during the period of installation only, the Service Provider's contractors and subcontractors shall provide coverage of not less than \$1,000,000 for personal injury to each person, \$2,000,000 for each occurrence, and \$2,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence.
- (b) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Customer and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insureds on the policy.
- (c) Workers Compensation Insurance. Service Provider, its contractors or subcontractors, if any, and all employers acting on Service Provider's behalf that are subject employers under Oregon Workers Compensation Law for this Agreement shall comply with ORS Chapter 656. If such coverage is required, Service Provider and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with Customer at all times during the Term.
- (d) "All Risk" Property Insurance for physical loss or damage to personal property owned by Service Provider including but not limited to equipment, machinery,

furniture and fixtures, located at the Premises and used in connection with this Agreement for the mutual benefit of Service Provider and Customer. Such insurance shall include coverage for such perils as are generally insured against for properties of similar character, age and location. Such insurance shall be maintained on a replacement cost basis in an amount not less than one hundred percent (100%) of the replacement value, and shall include coverage for the cost of demolition of a damaged structure and increased costs of construction arising from or caused by changes in building codes and other laws. Such insurance shall name Service Provider as insured and Customer as an additional insured.

#### 12.2.5 Special Provisions.

- (a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Service Provider, and any approval of said insurance by Customer is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Service Provider pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- (b) Customer reserves the right to suspend the Agreement in the event of non-compliance with the insurance requirements of this section. In no event shall any suspension entitle Service Provider to an automatic renewal of the Term.
- (c) General liability limits may be increased, at the discretion of Customer's Risk Manager, relative to risk involved. Upon such increase in liability limits, Service Provider shall have the discretion to adjust the price of power, to recover its actual costs. Rate increases, if any, will not exceed the incremental cost increase attributable to changes in the required level of insurance, and rates will be adjusted downward in the event that the incremental cost decreases over time.

### **Section 12.3 Modifications of Insurance Policies**

Customer or Service Provider shall promptly provide to the other party thirty (30) days advance written notice of any material changes to, or the proposed cancellation of, the insurance policies required to be carried by Customer or Service Provider. Customer and Service Provider shall also include in its required policies suitable waiver of subrogation provisions regarding property damage at the Premises.

## **ARTICLE 13 SHUTDOWN OF THE SOLAR FACILITY**

### **Section 13.1 Temporary Shutdown of the Solar Facility**

If, during the Term, renovations or damage to the Premises occurs, including but not limited to roofing repairs for reasons other than:

- (i) a Force Majeure,



- (ii) renovations or alterations undertaken by Service Provider, or
- (iii) the negligence of Service Provider or its employees or contractors or a breach by Service Provider of its obligations hereunder and the same eliminates the production or use or partial production or partial use of Solar Electricity from the Solar Facility or results in an Unscheduled Outage of the Solar Facility, then Customer shall not be in default under this Agreement if:
  - (i) Customer makes a good faith effort to give as much notice as possible to Service Provider prior to Solar Facility shutdown or curtailment; and
  - (ii) Customer pays all costs and expenses incurred to de-install and re-install the Solar Facility, if required for safety considerations or by Customer, during the temporary shutdown or curtailment period.

### **Section 13.2 Permanent Shutdown of the Solar Facility**

If, during the Term and for reasons other than a Force Majeure or an Event of Default where Service Provider is the defaulting party, the Solar Facility is permanently shut down due to renovation, damage, destruction, or closure of the Premises or any other cause whatsoever, Service Provider shall be entitled, in Service Provider's sole discretion, to pursue the following, as applicable:

- (a) Within thirty (30) days after a permanent shutdown of the Solar Facility, Customer shall provide written notice to Service Provider indicating whether or not Customer intends to restore operation of the Premises or whether relocation of the Solar Facility will be pursued.
- (b) If, within ninety (90) days after permanent shutdown of the Solar Facility, Customer and Service Provider mutually agree on an alternative location from which Service Provider can provide Solar Electricity to Customer, then Customer shall pay the costs associated with relocation of the Solar Facility. This alternative location shall, in the opinion of Service Provider, have the potential to provide substantially similar overall system output as the original Premises, unless Customer and Service Provider mutually agree that this output level is not required.
- (c) Customer and Service Provider agree that Service Provider shall be reimbursed for the period of Solar Facility shutdown, as though it were a temporary shutdown, under the payment mechanisms specified in Section 13.1 hereof.
- (d) If, within ninety (90) days after permanent shutdown of the Solar Facility, Customer and Service Provider have not agreed upon an alternative location for the Solar Facility, Service Provider may terminate this Agreement and seek to enforce all then applicable and available rights and damages of Service Provider hereunder.

## **ARTICLE 14 FORCE MAJEURE**

### **Section 14.1 Notice of Force Majeure Events**

If either Customer or Service Provider shall be prevented by Force Majeure from performing one or more of its obligations under this Agreement (other than Customer's obligation to make payments for any Solar Electricity), the Party unable to perform shall promptly notify the other Party in writing and shall keep the other Party informed of the situation for the duration of such event. The Party giving notice shall specify in reasonable detail the basis for the Force Majeure claim, its expected duration, and the steps which such Party is taking to overcome it. Except as otherwise provided herein, all of the provisions of this Agreement shall remain in full force and effect in the event of the occurrence of an event of Force Majeure.

### **Section 14.2 Force Majeure Relief**

Upon the receipt of a Force Majeure notice, the obligations of the Party providing the notice requesting relief shall be reduced or suspended, during the continuance of the Force Majeure, provided that such obligations shall be reduced only to the extent the affected Party's performance is adversely affected by the Force Majeure, and only to the extent that such adverse effects cannot be mitigated by the affected Party's diligent efforts; and provided further that with respect to a Force Majeure event affecting Customer's ability to utilize Solar Electricity from the Solar Facility, but not affecting Service Provider's ability to provide Solar Electricity to Customer hereunder, then Customer shall remain obligated to pay to Service Provider an amount equal to the applicable Energy Charges that would have been paid during the period of the Force Majeure (calculated based on the historical production of Solar Electricity by the Solar Facility).

In the event a Force Majeure Event is anticipated to prevent a Party from performing its obligations under this Agreement for a period of three (3) months or more, the Parties shall meet to determine the appropriate course of action. Notwithstanding the foregoing, Customer shall not be excused by this Article 12 from its obligation to pay Service Provider for any Solar Electricity generated prior to the event of Force Majeure.

## **ARTICLE 15 DISPUTE RESOLUTION**

### **Section 15.1 Disputes**

This Article 15 shall apply to any dispute arising under or related to this Agreement (whether arising in contract, tort or otherwise, and whether arising at law or in equity), including (a) any dispute regarding the construction, interpretation, performance, validity or enforceability of any provision of this Agreement or whether any Party is in compliance with, or breach of, any provisions of this Agreement and (b) the applicability of this Article 15 to a particular dispute. Any dispute to which this Article 15 applies is referred to herein as a "**Dispute.**"

## **Section 15.2 Negotiation to Resolve Disputes.**

15.2.1 Negotiation, Mediation and Arbitration. Regarding any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this Agreement, an attempt may be made by the Parties to negotiate a solution to such dispute or claim. Following any unsuccessful attempt at negotiation, the Parties may use local mediation services to further attempt resolution of such dispute or claim. If neither negotiation nor mediation is successful, the Parties may attempt to resolve the dispute or claim using local arbitration services. Either Party may forego any of the dispute resolution mechanisms stated in this section and pursue a remedy directly through litigation in state court.

## **ARTICLE 16 INDEMNIFICATION**

### **Section 16.1 Indemnification**

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

16.1.2 Buyer's Indemnity to Service Provider. To the extent allowed by law and subject to the limitations of the Oregon Tort Claims Act, Customer agrees that it will indemnify and hold harmless Service Provider and Service Provider's permitted successors and assigns and their respective subsidiaries, directors, officers, members, shareholders and employees (collectively, the "Customer Indemnified Parties") from and against any and all damages and expenses incurred by the Customer Indemnified Parties arising from or out of a claim against the Service Provider by any third person that an injury or death, or a loss or damage to property was caused by the activities or conduct of Customer. Customer is excused from any indemnity obligation to the Customer Indemnified Parties and is not required to reimburse or indemnify any Customer Indemnified Party for any claim to the extent such claim is due to the negligence or willful misconduct of any Customer Indemnified Party.

Section 16.2 Consequential Damages. Neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any indirect, special, consequential, incidental, exemplary or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract or in tort, including negligence, strict liability, or any other theory of liability.

### **Section 16.3 Survival of Indemnities**

The duty to indemnify will continue in full force and effect notwithstanding the expiration or termination of this Agreement.

### **Section 16.4 Waiver of Claims**

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

## **ARTICLE 17 REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

### **Section 17.1 Warranties and Representations of Both Parties**

Each Party warrants and represents to the other that: (i) it is a legal entity, duly organized, validly existing, and in good standing under the laws of the State of Oregon; (ii) this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms and is not in violation of any requirement of law; and (iii) the execution, delivery and performance of this Agreement (A) is within its powers, (B) has been duly authorized by all requisite action and (C) will not violate any provision of applicable law or any agreement, commitment, certificate, or other document to which it is a party or by which any of its assets may be bound or affected.

### **Section 17.2 Customer's Additional Representations and Warranties**

Customer has full power and right to enter into this Agreement and to allow Service Provider the use and possession of the Solar Facility.

**ARTICLE 18**  
**ASSIGNMENT; RIGHTS OF SERVICE PROVIDER'S LENDER**

**Section 18.1 Assignment by Service Provider and Customer**

18.1.1 Upon advance written notice to Customer, this Agreement may be assigned by Service Provider to an entity that is at least as qualified as Service Provider, in Customer's reasonable determination, to perform the obligations of Service Provider hereunder, and any or all of Service Provider's rights, title, and interest under this Agreement (including without limitation any payments by Customer hereunder) may be assigned by Service Provider; provided, however, that unless otherwise expressly agreed thereto in writing by Customer in a connection with an assignment by Service Provider, any such assignment will not relieve Service Provider of any of its obligations hereunder. Upon written consent of Service Provider, this Agreement may be assigned by Customer to any affiliate, provided, however, that any such assignment will not relieve Customer of any of its obligations hereunder. Any direct or indirect change of control of Service Provider (whether voluntary or by operation of law) shall be not deemed an assignment of this Agreement.

18.1.2 All covenants and provisions of this Agreement by and for the benefit of the Parties hereto shall bind and inure to the benefit of their respective successors and assigns as permitted by the provisions of this Section.

**Section 18.2 Rights of Service Provider's Lender**

Customer acknowledges that Service Provider may be financing the Solar Facility with financing accommodations from one or more financial institutions and, if so financed, that Service Provider's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the Solar Facility. In order to facilitate such financing, and with respect to any such financial institutions of which Service Provider provides notification to Customer in writing (each, a "**Lender**"), Customer agrees as set forth below. Provided, however, that Service Provider is permitted to and shall grant a security interest in the Solar Facility or any of the solar modules or other equipment or components only to the extent that they are and remain personal property and trade fixtures, and not fixtures or part of the building or real property to which they are affixed.

18.2.1 **Consent to Collateral Assignment.** Service Provider shall have the right to assign this Agreement as collateral for financing or refinancing of the Solar Facility, and Customer consents to the collateral assignment by Service Provider to the Lender of Service Provider's right, title and interest in and to this Agreement. In addition, Customer shall in good faith work with Service Provider and the Lender to agree upon a consent by Customer to collateral assignment of this Agreement. Promptly upon making any such collateral assignment of this Agreement, Service Provider shall give written notice of such assignment to Customer, which notice shall specify the name of the Lender and provide the Lender's address to which notices hereunder shall be sent.

18.2.2 **Lender's Rights Following an Event of Default.** Notwithstanding any contrary term of this Agreement:

- (a) The Lender, as collateral assignee, shall be entitled to exercise, in the place and stead of Service Provider, any and all rights and remedies of Service Provider under this Agreement in accordance with their respective terms. Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Solar Facility, except the right to remove the Solar Facility from the Premises except as otherwise specifically set forth herein.
- (b) The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Service Provider hereunder or cause to be cured any default or Event of Default of Service Provider in the time and manner provided by the respective terms of this Agreement. Nothing herein requires the Lender to cure any default of Service Provider (unless the Lender has succeeded to Service Provider's interests) to perform any act, duty or obligation of Service Provider, but Customer hereby gives the Lender the option to do so.
- (c) Upon the exercise of remedies under its security interest in the Solar Facility, including any sale thereof by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from Service Provider to the Lender, the Lender will give notice to Customer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute an Event of Default.
- (d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Service Provider under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Customer will enter into a new Agreement with Lender on the same terms and conditions, except for those terms which may be required to change such as the location of the Premises.

18.2.3 **Lender's Right to Cure.**

- (a) Customer will not exercise any right to terminate or suspend this Agreement unless Customer has given the Lender prior written notice. Customer's notice of an intent to terminate or suspend its performance hereunder must specify the condition giving rise to such right. The Lender has the longer of thirty (30) days from the date of receipt of any notice from Customer or the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, the Lender may have up to an additional ninety (90) days to cure if the Lender commences to cure the condition within the thirty-day period and diligently pursues the cure thereafter. Customer's and Service Provider's obligations under this Agreement will otherwise remain in effect and required to be fully performed during any cure period.

- (b) If the Lender or its assignee will acquire title to or control of Service Provider's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 18.2.3(a) above, then this Agreement will continue in full force and effect.

18.2.4 **Notice of Defaults and Events of Default.** Customer agrees to deliver to the Lender a copy of any notice of Service Provider's default hereunder which Customer is delivering to Service Provider.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **Section 19.1 Applicable Law**

This Agreement shall be interpreted and governed by the laws of the state of Oregon, without regard to conflict of laws provisions. Any Dispute shall be resolved in accordance with Article 15 of this Agreement.

### **Section 19.2 Project Manager**

The Customer has assigned the Director of the Bureau of Planning and Sustainability, or the Director's designee, to be its representative and agent to oversee and manage the terms of this Agreement ("Project Manager"). The Project Manager is authorized to approve work, billings and invoices submitted pursuant to this Agreement and to carry out all other City actions referred to herein in accordance with this Agreement. The Project Manager may execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase City's performance obligations or financial risk. Amendments increasing the City's financial risk must be approved by the City Council by ordinance. 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.

### **Section 19.3 Interpretation Rules**

Titles and headings are included in this Agreement for convenience only, and shall not be used for the purpose of construing and interpreting this Agreement. Words in the singular also include the plural and vice versa where the context requires.

### **Section 19.4 Severability**

In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Customer and Service Provider shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

**Section 19.5 Counterparts**

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

**Section 19.6 Entire Agreement, Amendments and Waivers**

Except for Grant Agreement No. 32000677 between Tangerine Power and the City of Portland's Bureau of Planning and Sustainability, this Agreement constitutes the entire agreement between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

**Section 19.7 Non-Recourse to Individuals; Independent Contractor**

19.7.1 Except as otherwise expressly provided in this Agreement, no officer, director, employee, shareholder, or agent of either Party, or officer, director, employee, shareholder, or agent of an affiliate or assignee of either Party, shall have any liability to the other Party in connection with this Agreement.

19.7.2 This Agreement is intended by the Parties to be and shall constitute a service contract. The relationship of Service Provider to Customer hereunder is that of service provider to service recipient.

19.7.3 Except as otherwise expressly provided herein, this Agreement shall not inure to the benefit of any Entity that is not a signatory to this Agreement.

**Section 19.8 Survival of Obligations, Indemnities, Representations, and Warranties**

Except as otherwise expressly provided herein, termination of this Agreement for any reason shall not relieve the Parties of any obligation arising prior to such termination. The representations, warranties and covenants of Customer and Service Provider contained in this Agreement shall survive the termination of this Agreement. The duty of the Parties to indemnify will continue in full force and effect notwithstanding the expiration of this Agreement or the assignment or transfer of this Agreement or other rights and responsibilities hereunder.

**Section 19.9 Further Assurances**

Either Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Agreement if the request from the other Party is reasonable.

**Section 19.10 Confidential Information**

The parties recognize that Customer is subject to the Public Record Act of Oregon, ORS 192.410 et seq, and, with limited exceptions, documents created or held by Customer are public records open to inspection and subject to disclosure upon public request. If Service Provider wishes



Customer to maintain confidentiality of any documents, Service Provider will identify specific documents for which it seeks confidential treatment and specify the public records exemption it believes allows Customer to decline to disclose the document to the public.

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

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

#### **Section 19.11 Tax and Regulatory Compliance; Service Provider Tax Benefits**

19.11.1 Service Provider is the owner of the Solar Facility for all purposes during the Term hereof, including in respect of any federal, state and local income taxes.

19.11.2 The Parties agree to reasonably cooperate to structure the transactions contemplated by this Agreement to address, to the mutual benefit of the Parties, the various tax and regulatory compliance issues associated with the Solar Facility; provided, however, that neither Party incurs additional costs or expenses, or suffers adverse economic effects as a result.

19.11.3 Customer agrees from time-to-time during the Term, and upon written request from Service Provider, to execute and deliver any instrument, release or other document that may be reasonably required by Service Provider or any equipment supplier, vendor, Lender and/or other Entity to Service Provider regarding ownership of Service Provider Property, including the filing by Service Provider or such other Entity of UCC-1 statements or other documents with any Governmental Authority. If, despite the intent of the Parties, Customer is deemed to have an interest in Service Provider Property, Customer hereby grants to Service Provider a security interest in Service Provider Property, and in all accessions, attachments and modifications thereto, and all proceeds thereof.

## Section 19.12 Incorporation of Appendixes and Exhibits

The following Appendix and Exhibits attached to this Agreement, are incorporated herein by reference, and are made a part hereof:

Appendix 1 - Definitions

Exhibit A – Description of Solar Facility and Premises

Exhibit B – Interconnection Agreement Application

Exhibit C – Solar Electricity Billing (Energy Charge)

Exhibit D – Termination Fee

## Section 19.13 Customer's Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, Customer's liability for liquidated damages, termination fees and other costs and damages is limited to the extent required by Article XI, section 7 of the Oregon Constitution. In addition, if any costs are payable after the end of the fiscal year in which this Agreement is effective, Service Provider understands and agrees that Customer's payment of amounts under this Agreement is contingent on Customer receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Customer, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. Provided, however, Customer covenants and agrees to use its best efforts to appropriate sufficient funds within its budget to fulfill Customer's obligations hereunder.

## ARTICLE 20 NOTICES

Except as otherwise provided in this Agreement, or as the addressee may later specify in a written notice, all notices or other communications hereunder shall be in writing and deemed given if delivered personally or to a nationally recognized express mail service, addressed as follows:

If to Service Provider:	Portland Community Solar, LLC Attention: Stanley Florek [Address] Email: stanley.florek@tangerinepower.com Phone: (425) 891-4001
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In addition, Service Provider shall provide to Customer, and keep current, a local contact person and his or her telephone and e-mail contact information for maintenance, operations, access and emergency issues.

If to Customer:	Project Manager City of Portland Bureau of Planning and Sustainability Attention: Andria Jacob 1900 SW 4 <sup>th</sup> Avenue, Suite 7100
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Portland, OR 97201  
Email: andria.jacob@portlandoregon.gov  
Phone: 503-823-7616

In addition:

City of Portland Parks and Recreation  
Attention: Zalane Nunn, Property Manager  
1120 SW 5<sup>th</sup> Avenue, #1302  
Portland, OR 97204  
Email: zalane.nunn@portlandoregon.gov  
Phone: 503-823-2555

## **ARTICLE 21 TAX CERTIFICATION**

By signature on this Agreement, the undersigned party acting on behalf of Service Provider hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Service Provider and that Service Provider is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "**Oregon Tax Laws**" means a state tax imposed by ORS 401.792 to 401.816, ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

*[SIGNATURE PAGE FOLLOWS.]*

**CUSTOMER:**

**[Host],**  
a [Entity Type]under the laws of the State of  
Oregon

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PDXDOCS:1854199.3

## APPENDIX 1

### DEFINITION OF CERTAIN TERMS

**"Agreement"** means this Energy Services Agreement.

**"Approvals and Permits"** means all applicable approvals, consents, franchises, permits, licenses, certificates, interconnection approvals, inspections and authorizations required by any utility, Governmental and non-governmental Authority, or any other Entity, including any modifications thereto, arising out of, or related to, the design, construction, operation, maintenance and/or removal of the Solar Facility.

**"Billing Period"** has the meaning ascribed to it in Section 8.1 of this Agreement.

**"Building"** has the meaning ascribed to it in the recitals of this Agreement.

**"Customer"** has the meaning ascribed to it in the opening paragraph of this Agreement.

**"Delivery Point"** shall be described and set out in Exhibit A of this Agreement.

**"Dispute"** has the meaning ascribed to it in Section 15.1 of this Agreement.

**"Effective Date"** has the meaning ascribed to it in the opening paragraph of this Agreement.

**"Energy Charge"** has the meaning ascribed to it in Exhibit C of this Agreement.

**"Entity"** or **"Entities"** means any other entity or natural person other than a Party.

**"Environmental Laws and Requirements"** means any applicable laws, codes, statutes, common law(s), rules and regulations relating to actual or potential effects on the environment or public health or any other law in effect relating to the protection of the environment or otherwise addressing environment, health or safety issues or requirements of, or by any Governmental Authority, or otherwise relating to noise, or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, emission, discharge, release or handling of Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et. seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801, et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et. seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et. seq.), the Clean Air Act (42 U.S.C. 7401 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) and the Safe Drinking Water Act (42 U.S.C. 300f et. seq.), all as presently in effect, and as the same may hereafter be amended, and any regulation issued pursuant thereto, and also including, but not limited to, any obligations, duties or requirements arising from, or related to, Hazardous Materials and/or relating to actual or potential effects on the environment or public health.

**"Event of Default"** has the meaning ascribed to it in Section 10.1 of this Agreement.

**"Force Majeure"** means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure and that could not have been avoided by commercially reasonable efforts by the claiming Party, that prevents a Party from performing its obligations hereunder, including, but not necessarily limited to, the following:

- (a) any act of God;
- (b) any of the following: landslide, lightning, fire, earthquake, explosion, hurricane, tornado, drought, flood and perils of the sea and air;
- (c) extortion, sabotage, theft or similar occurrence, acts of a public enemy or terrorist, war (declared or undeclared) or governmental intervention as a result, blockade, embargo, government imposed economic sanctions, insurrection, riot or civil disturbance;
- (d) strikes or labor disputes;
- (e) any order or judgment of any federal, state or local court, administrative agency or Governmental Authority issued after the Effective Date;
- (f) any delay in, or the failure by a regulatory agency or other authority to issue or renew, or the suspension, termination, interruption, or denial of, any permit, license, consent, authorization, or approval essential to the performance of this Agreement;
- (g) the failure to obtain any easements required for the construction, operation or maintenance of the Solar Facility, including any easements required from an Entity other than a Party hereto;
- (h) change of law;
- (i) timely delivery of solar modules, provided Service Provider has employed commercially reasonable efforts to cause such timely delivery to occur;
- (j) vandalism of the Solar Facility; provided, however, that upon the first occurrence of vandalism, the parties shall meet and work in good faith to agree on a plan to prevent further vandalism from occurring and any costs associated with such preventive measures shall be borne by the Service Provider.

*provided that* **"Force Majeure"** shall not include the financial inability of Customer to make the payments to Service Provider required hereunder.

**"Governmental Authority"** shall mean any federal, state or local government exercising jurisdiction over either Party, including any agency, court or instrumentality of any such government exercising executive, legislative, judicial, regulatory or administrative functions.

**"Hazardous Materials"** means asbestos, material containing asbestos, pollutants, emissions, hazardous wastes, hazardous materials, contaminants, including petroleum products, or other material or wastes that are regulated by Environmental Laws and Requirements.

**"Initial Delivery Date"** means the first day of the month following the initial delivery of Solar Electricity to Customer.

**"Interconnection Facilities"** means all necessary utility and telecommunication lines and conduits connecting the Solar Facility with the Premises, the systems serving the Premises and the local electric distribution company.

**"Invoice"** has the meaning ascribed to it in Section 8.1 of this Agreement.

**"Liabilities"** has the meaning ascribed to it in Section 16.1 of this Agreement.

**"Metering Devices"** has the meaning ascribed to it in Section 6.1 of this Agreement.

**"Operations Commencement Date"** means the date on which Service Provider commences delivery of Solar Electricity to Customer in the amounts contemplated by this Agreement.

**"Party"** and **"Parties"** have the meanings ascribed to them in the opening paragraph of this Agreement.

**"Utility"** means the retail electricity utility provider to Customer or any successor to that utility provider.

**"Property Owner"** has the meaning ascribed to it in the Recitals of this Agreement.

**"Premises"** has the meaning ascribed to it in the Recitals of this Agreement.

**"Purchase Option"** has the meaning ascribed to it in Section 2.2 of this Agreement.

**"Qualified Solar Power Generation Facility"** means a Solar Facility that is in compliance with Internal Revenue Service Federal Investment Tax Credit eligibility provisions.

**"Service Provider"** has the meaning ascribed to it in the opening paragraph of this Agreement.

**"Solar Electricity"** means all of the alternating current electricity produced by the Solar Facility.

**"Solar Electricity Requirements"** means the electric load at the Premises.

**"Solar Facility"** means the solar generation project place on an individual school building, together with the rights of Service Provider pursuant to this Agreement.

**"Term"** has the meaning ascribed to it in Section 2.1 of this Agreement.

**"Termination Fee"** has the meaning ascribed to it in Section 11.1.2 of this Agreement.

**EXHIBIT A****Description of Solar Facilities and Premises****Solar Facility 1**

The Solar Facility shall consist of the following:

A solar photovoltaic generation system with a cumulative annual estimated generating production of \_\_\_\_\_ kilowatt hours, including any associated racking, monitoring meter, conduit, wire, inverter(s), disconnect box and combiner boxes.

**Premises 1**

The Premises shall include, but are not limited to the land described below and all buildings, improvements, easements, licenses, and utility lines located on or appurtenant to such land, including a designation of the Delivery Points.

*[Add legal description for Building(s)]*



185530

**EXHIBIT B**

**Interconnection Agreement Application**

*See attached document.*

**EXHIBIT C****Solar Electricity Billing (Energy Charge)**

Prior to Solar Facility activation, Customer shall execute a Payment Assignment Agreement with their Utility to assign to Service Provider all Solar VIR Payments due from the Utility to Customer for the Solar Facility.

Additionally, a quarterly Energy Charge for Solar Electricity delivered to Customer under this Agreement will be charged by Service Provider. The Energy Charge will vary from quarter-to-quarter based upon the actual amount of Solar Electricity delivered from the Solar Energy Facility to Customer, and the retail rate of energy charged by Utility to Customer.

The monthly Energy Charge shall be determined by ascertaining the number of kilowatt hours of Solar Electricity delivered to Customer from the Solar Generation System during the applicable utility billing period and multiplying same by the corresponding Utility Energy Rate applicable during the billing period, minus a 10% discount.

Example:

Customer Retail Rate = \$0.10 per kWh

Solar Energy Production during Utility billing period (1 month) = 800 kWh

Solar Net Metering benefit to Customer bill = \$80 (800 kWh x \$0.10/kWh)

Discounted Service Provide Energy Rate = \$0.09 per kWh (\$0.10/kWh less 10%)

Monthly Energy Charge from Service Provider = \$72 (800 kWh x \$0.09/kWh)

Monthly Energy Charges will be aggregated into quarterly Billing Period changes for the purposes of invoicing.

Service Provider will issue Customer a credit for the amount of any annual License Payment as defined in Section 3.1, plus any Solar Metering Charge or any VIR Payment Assignment Charge assessed to the Customer by their Utility during the billing cycle the Charges are assessed. If the amount of credits are greater than the Solar Electricity charge due in the current billing cycle, the surplus amount will be carried forward to the next billing period.

Billing Periods will follow this schedule:

Invoice Date	January 1	April 1	July 1	October 1
Billing for solar production during dates	October 1 - December 31	January 1 – March 31	April 1 - June 30	July 1 – September 30

**EXHIBIT D**

185530

**Termination Fee**

The Termination Fee shall be calculated in accordance with the following schedule. Once the Solar Facility has been installed and is fully operational, termination in the first 6 years after the Parties enter into this Agreement is not permitted so as to preserve the value of the Solar Provider's Federal Tax Credits. The parties acknowledge that the Termination Fee for subsequent years constitutes negotiated damages, and not penalties, payable in lieu of the Service Provider's anticipated revenues during the remaining VIR contract term. The parties agree that the negotiated amounts reflect their mutually acceptable estimates of what the Service Provider's actual damages would be, in accordance with Customer's rights and obligations under this Agreement.

<b>Termination Occurs in Year</b>	<b>Termination Fee per kW of Solar Facility</b>
1	Not Permitted
2	Not Permitted
3	Not Permitted
4	Not Permitted
5	Not Permitted
6	Not Permitted
7	\$2,800
8	\$2,450
9	\$2,100
10	\$1,750
11	\$1,400
12	\$1,050
13	\$700
14	\$350
15	\$100