

Exhibit A

Bucks for Buildings Program Eligibility Criteria

- Available for energy efficiency projects in existing privately-owned commercial buildings that are located within Portland city limits and are 50,000 square feet or less in total size.
- Rebate will be awarded at up to 50% of eligible project costs. Projects for non-profit organizations are eligible for a rebate up to 75% of eligible project costs.
- Maximum rebate is \$30,000 per project. Minimum rebate is \$1,000.
- Combined Bucks for Buildings rebate and incentives from the Energy Trust of Oregon must not exceed 100% of project cost.
- Eligible project costs include insulation, heating and cooling equipment, lighting, lighting controls and food service equipment that meet or exceed Energy Star® or Energy Trust of Oregon efficiency standards.
- Contractor must be in good standing as a Trade Ally of Energy Trust of Oregon.

GRANT AGREEMENT NO.

This Grant Agreement (“Agreement”) is between the City of Portland Bureau of Planning and Sustainability (“BPS” OR “City”) and _____ (_____ OR “Grantee”) in an amount not to exceed \$30,000. This Agreement may refer to the BPS and Contractor individually as a “Party” or jointly as the “Parties.”

RECITALS:

1. Grantee has submitted a Project Proposal to BPS for participation in the Bucks for Buildings Rebate Program (the “Grant Program”) for a project to occur at the private property located at: xxxxx (the “Project”).
2. The Bucks for Buildings Rebate Program provides financial incentives to support energy efficiency improvements in privately-owned small commercial buildings. Eligibility criteria may be obtained from the website: www.portlandoregon.gov/bps/bucks.
3. For the purposes of this agreement grants will be referred to as “Rebates” due to the nature of one time payments and minimal reporting conditions.
4. BPS has reviewed the Project Proposal and determined that the Project qualifies for grant funding (the “Rebate”).
5. Grantee will complete the Project as described in the Grantee’s Project Proposal.
6. Any changes to the Project Proposal are subject to program review and verification of measure qualification. This agreement in no way guarantees that a Rebate will be paid by BPS.
7. If Grantee fails to perform its obligations under this agreement, Grantee will reimburse BPS for any Rebates disbursed under this agreement to the Grantee.
8. This Grant was made possible by The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (ARRA). ARRA was enacted to create jobs, promote economic recovery and provide investments needed to increase economic efficiency that will provide long-term economic benefits. Grantee will use grant funds in a manner that seeks to maximize job creation and economic benefit, in conformity with the ARRA goals.

AGREED:

I. SPECIFIC CONDITIONS OF THE GRANT

- A. ARRA. The City’s funding under this Agreement is provided under EECBG Award DE-EE0003565/000 from the DOE through ARRA funding. Grantee must comply with ARRA to the extent identified in this Agreement or otherwise communicated and directed by the City. In the event of any variance between the terms and conditions of this Agreement and ARRA requirements and applicable federal administrative regulations, the terms and conditions of the federal requirements and ARRA provisions shall control.
 - i. Prohibited Use of Grant Funds. No funds provided under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.
 - ii. Accounting. ARRA funds used to support work performed under this Agreement, in whole or in part may be used in conjunction with other funding sources as necessary to complete projects. However, Grantee must separately track and report on ARRA funds.
- B. Monitoring. City may monitor the Project to assure compliance with the terms and conditions of this Agreement. Monitoring may include, but is not limited to, on-site visits, telephone interviews and review of required reports, as well as programmatic and fiscal aspects of the Agreement. The frequency and level of monitoring will be determined by the Grant Manager. Regardless of such monitoring, Grantee is responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.

- C. Publicity. BPS may collect and publish information about the application, installation, and performance of the Project, as defined in the Project Proposal, including but not limited to interviews with Grantee and Project participants such as project owner and general contractor. Collection of information by BPS may include photographs and videotape. Any publicity shall indicate that the project was made possible in part by a Grant from BPS through ARRA funds. BPS may include information regarding the Project in periodic public reports. BPS will not use personal information such as the Project address or Grantee's identity in such publicity without Grantee's express permission, or permission of the project owner.
- D. Non-Endorsement. Nothing in this Agreement implies BPS's endorsement or support of the viewpoints expressed by Grantee. BPS reserves the right to request Grantee clarify BPS's disassociation or non-endorsement of Grantee's viewpoints.
- E. Notice. Any notice provided under this agreement shall be sufficient if in writing and: (1) delivered personally; (2) deposited in the United States mail, postage prepaid; (3) sent by courier; or, (4) transmitted by facsimile or email, addressed as follows, or to such other address as the receiving party specifies in writing:

<u>Grantor:</u>	<u>Grantee:</u>
Kyle Diesner	[Grantee contact person]
Bureau of Planning and Sustainability	[Grantee name]
1900 SW 4 th Ave., Room 7100	[Grantee address]
Portland, OR 97201	
Tel. 503-823-4166	[Grantee Tel:]
Fax 503-823-5311	[Fax:]
kyle.diesner@portlandoregon.gov	[Email address:]

- F. Reports. Grantee will submit to the Grant Manager a Final Paid Invoice at the completion of all work, services or actions required of Grantee under this Agreement. The Final Paid Invoice will include:
1. All installed measures, including:
 - a. Measure cost
 - b. Brand, Model number
 - c. Efficiency ratings
 - d. Sq footage or quantity installed
 2. Total project cost
 3. Total job hours
 4. Installation completion date
 5. Energy Trust of Oregon (ETO) incentive; and.
 6. Confirmation of final payment from Project owner.

BPS reserves the right to request additional documentation to determine whether Grantee's expenditures complied with the requirements of this Agreement and/or interim reports or information on the progress of work, services or actions required from Grantee.

II. PAYMENT

- A. Grantee will receive the Rebate in one single payment upon Grantee's submission of the Final Paid Invoice and BPS's verification of project completion and determination of the Total Eligible Rebate Amount.
- B. BPS has final and sole discretion to determine whether Grantee has fully and successfully completed the Project. BPS's determination that the measures have been fully and successfully completed will be shown by signing the Certificate of Completion. The Certificate of Completion will also include BPS's final determination of the Total Eligible Rebate Amount. The Grant Manager may extend the time for completing the examination of the Project, depending upon the availability of personnel or other factors. No payment will be due and owing unless BPS has determined that Grantee has successfully completed the Project and submitted the Final Paid Invoice. No payments will be made if the Certificate of Completion is not signed by **November 1, 2013**.
- C. If for any reason BPS determines that Grantee has received a Rebate payment under this Agreement and has not properly used Rebate funds, provided required work or services or performed as required by the Agreement, BPS may require Grantee to immediately refund the Rebate to BPS.
- D. Grantee will keep receipts and evidence of payment for materials and services, vendor billings, time records, payment for program wages/salaries and benefits. Grantee shall promptly make receipts and evidence of payments related to the Project available to the Grant Manager or other designated persons, upon request. Such records shall be made available as part of the monitoring process under Section I.B above, and provided as documentation in support of the Final Report.

III. GENERAL PROVISIONS

- A. Early Termination. This Agreement may be suspended or terminated at any time by:
- Written notice provided by BPS to Grantee before Grantee incurs any obligations;
 - Written notice by BPS resulting from a material failure by Grantee to comply with any term of this Grant, or;
 - Mutual written agreement of the parties.

All indemnity, record retention and confidentiality provisions will survive termination of this Agreement.

B. Changes in Anticipated Services. If, for any reason, Grantee's anticipated services or actions are terminated, discontinued or interrupted, Grantee shall immediately notify BPS.

C. Grant Manager Authority. The Grant Manager will be Kyle Diesner or such other person as may be designated in writing by the Director of the Bureau of Planning and Sustainability. The Grant Manager may approve work and billings and invoices submitted pursuant to this Agreement, and carry out all other Grantor actions under this Agreement. The Grant Manager may extend the term of the agreement, but in no event may the term be extended beyond December 31, 2013. The Grant Manager may make other amendments that do not increase the Total Grant Amount or otherwise increase the City of Portland's financial risks subject to approval of the Director of the BPS. No amendments of this agreement will be valid unless signed by duly authorized representatives of the parties. The Grant Manager may determine if Grantee has failed to substantially comply with the requirements of this agreement, and to act on behalf of BPS to suspend or terminate this agreement.

D. Non-discrimination. 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 may 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 contract 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 contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

ARRA requires that the Grantee, as a non-federal employer receiving ARRA funds, post a notice of ARRA Whistleblower rights and remedies at all Recovery Act job sites. A copy of the notice may be obtained from the website:

<http://www.recovery.gov/contact/reportfraud/documents/whistleblowerposter.pdf>

E. Maintenance of and Access to Records. Grantee shall maintain all books, general organizational and administrative information, supporting documents, papers, and records related to this Agreement for six (6) years after BPS makes final grant payment or the termination date of this Agreement, whichever is later. Grantee shall provide BPS prompt access to these records upon request and permit copying as BPS may require.

F. Audit. Books of account and records relating to this Agreement are 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 III.E. Grantee shall afford the City or the Federal Government proper facilities for such inspection and audit.

G. Indemnification. Grantee shall hold harmless, defend, and indemnify the City, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of the Contractor or its officers, employees, Subcontractors, or agents under this Agreement, including intentional acts, or of its Subcontractors, agents or employees. This duty shall survive the expiration or termination of this Agreement. Grantee is solely responsible for selection of criteria, operation, administration and maintenance of the Project, and the City has no corresponding responsibility or liability. The City makes no warranties, express or implied, regarding the Project. Grantee expressly waives any claims against the City regarding the Project. In no event shall the City be liable to Grantee or any third-party for any special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to the Project or the Agreement, however caused, whether or not arising from the City's sole, joint or concurrent negligence. 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 provided under the Agreement, related to or arising from Grantee's breach of any such ARRA requirements, Grantee shall hold harmless and indemnify the City for amounts equal to the 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.

H. ETO Trade Ally Network. During the term of this Agreement, Grantee shall be fully qualified as a Trade Ally of the Energy Trust of Oregon (ETO). If Grantee's qualified status is suspended or terminated during the term of this Agreement, Grantee shall immediately notify BPS. Failure to be fully qualified as an ETO Trade Ally shall be grounds for the City to immediately terminate this Agreement.

I. Non-Assignment. 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.

J. 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.

K. Conflict of Interest. No City officer or employees shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No City officer or employee who selected Grantee, participated in the award of this Agreement or managed this Agreement may seek the promise of employment from Grantee or be employed by Grantee during the term of the Agreement, unless waived by the City in writing.

L. Oregon Law and Forum. This Agreement shall be governed by and construed according to the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state. Any litigation between the Parties arising under this Agreement or regarding this Agreement shall occur in Multnomah County Circuit Court or the United States District Court for the District of Oregon in Portland, Oregon.

M. Compliance with Law. Grantee and all persons performing work under this Agreement shall comply with applicable federal, state, and local laws and regulations, including reporting to and payment of applicable federal, state and local taxes and business licenses. 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.

N. Independent Financial Audits/Reviews. If Grantee receives between \$25,000 and \$300,000 in City funds in any program year, it must obtain an independent financial review of the City funded program. Two copies of the required financial review must be submitted to the Grant Manager within thirty days of audit completion or upon request by the Grant Manager.

O. 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.

P. 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, agreements or representations that vary or supplement the conditions of this Agreement that are not contained herein. Grantee, by the signature of its authorized representative, acknowledges that the terms and conditions have been reviewed, that they are understood, and that Grantee agrees to be bound by all of the terms and conditions set forth in this Agreement.

Q. Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, there are no third party beneficiaries to this Agreement and may only be enforced by the Parties.

R. 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.

IV. 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.

All work by Grantee shall be completed no later than September 30, 2013. This Grant Agreement shall terminate no later than December 31, 2013.

CITY OF PORTLAND, Bureau of Planning and Sustainability **GRANTEE**

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Approved as to Form

City Attorney