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## Exhibit B

### Term Sheet for Community Benefits Agreement

SoloPower will enter into a Community Benefits Agreement which will include the following:

1. SoloPower shall work with Portland Community College to develop a curriculum to support SoloPower's workforce training needs;
2. SoloPower shall develop an internship program in consultation with Portland Public Schools to support job training for high school students;
3. SoloPower shall designate a representative to serve in an advisory capacity on boards or committees relating to economic development matters impacting the solar industry; and
4. SoloPower shall use good faith efforts to source goods, products, and services from the Portland area during the design and construction of the Solar Facilities.

**Exhibit A**

(Placeholder)

SoloPower Inc. NONDISCLOSURE AGREEMENT - (Outbound)

This Nondisclosure Agreement (this "Agreement") is made and entered into as of May 10, 2011, between SoloPower, Inc., a Delaware corporation with its principal place of business at 5981 Optical Court, San Jose, CA 95138 ("SoloPower"), and the City of Portland with offices located at 1221 SW 4<sup>th</sup> Avenue, Portland, Oregon 97204.

1. **PURPOSE.** SoloPower develops technology, tools, and products in the field of solar energy, including the deposition, removal, and processing of thin films and the manufacturing of photovoltaic ("PV") devices. SoloPower and the CITY are discussing and evaluating the possibility of locating a PV manufacturing facility in Portland, Oregon and incentive programs that may be available to SoloPower. For this purpose, SoloPower may disclose Confidential Information (as defined in Section 2), including, but not limited to, information on SoloPower's technology, equipment and part designs, production processes, PV devices, and production volumes as a result of this work.

2. **"CONFIDENTIAL INFORMATION"** means any nonpublic, proprietary information disclosed to the CITY by SoloPower, either directly or indirectly in writing, orally, by facsimile or email, or by inspection of tangible objects, including, but not limited to, trade secrets, inventions, discoveries, ideas, patentable works, concepts, know-how, techniques, processes, designs, specifications, drawings, diagrams, data, computer programs and code, software, employee records of all types, financial and business information, business plans, prototypes, samples, and plant and equipment.

3. **NONUSE AND NONDISCLOSURE.** The City agrees not to use any Confidential Information for any purpose except in connection with and for the purpose of performing the activities under Section 1 hereof. The CITY shall not analyze, reverse engineer, decompile, or deconstruct any Confidential Information, or cause a third party to do the same.

4. **MAINTENANCE OF CONFIDENTIALITY.** The CITY agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of Confidential Information for a period of five (5) years following the date of the disclosure of Confidential Information. Without limiting the foregoing, the CITY shall take at least those measures that the CITY takes to protect its own confidential information. The CITY shall not make any copies of Confidential Information other than as necessary, consistent with the purpose under Section 1 for which it has received such Confidential Information. In the event the CITY makes such copies, it shall reproduce SoloPower's proprietary rights notices on any such copies, in the same manner in which such notices were set forth in or on the original. Notwithstanding the foregoing, if the CITY is subject to judicial or governmental proceedings to disclose Confidential Information or is required to disclose Confidential Information under the Oregon Public Records Law as determined in good faith by CITY or is required to disclose Confidential Information to a federal, state, local, or foreign government agency, tax agency, or government-authorized self-regulatory organization, then, prior to any such disclosure, the CITY agrees to provide SoloPower with reasonable prior written notice (unless prohibited by law) so that SoloPower may seek a protective order or confidential treatment of Confidential Information. The requirement to maintain the confidentiality of Confidential Information shall not apply to information that the CITY can reasonably establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to the CITY by SoloPower; (ii) becomes publicly known and made generally available after disclosure to the CITY by SoloPower through no action or inaction of the

CITY; (iii) is in the possession of the CITY, without confidentiality restrictions, at the time of disclosure by SoloPower; (iv) is disclosed to the CITY by a third party who may transfer or disclose such information without restriction; or (v) was independently developed by the CITY without use of or reference to Confidential Information.

**5. RETURN OF MATERIALS.** All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the CITY shall be and remain the property of SoloPower and, upon the written request by SoloPower, shall promptly be returned to SoloPower by the CITY or, with written permission of SoloPower, be destroyed by the CITY, and the CITY shall provide SoloPower written certification of such return or destruction.

**6. No LICENSE.** Nothing in this Agreement is intended to grant any rights to the CITY under any patent, mask work right, trademark, copyright, or other proprietary right of SoloPower, nor shall this Agreement grant the CITY any rights in or to Confidential Information except as expressly set forth herein. All information is provided on an "as is" basis, without any express or implied warranties, including but not limited to a warranty that it is accurate or complete or a warranty against infringement.

**7. TERM.** This Agreement will be effective as of the date first written above and will continue until written notice of termination is provided by either party to the other. All provisions of this Agreement relating to Confidential Information disclosed pursuant to this Agreement prior to termination will survive termination of this Agreement.

**8. REMEDIES.** Without limiting the remedies available to SoloPower, the CITY acknowledges and agrees that its breach of this Agreement may cause irreparable harm to SoloPower, for which there may be no adequate remedy at law and the ascertainment of damages would be difficult. Therefore, SoloPower shall be entitled, in addition to, and without having to prove the inadequacy of, other remedies at law (including without limitation damages for prior breaches hereof), to seek injunctive relief (without being required to post bond or other security), as well as specific performance of this Agreement.

**9. MISCELLANEOUS.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without reference to conflict of laws principles. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and it supersedes all prior agreements, understandings, promises, and representations, whether oral or written, between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. In the event of any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

**10. U.S. DOE CONFIDENTIAL INFORMATION.** The term Confidential Information shall include the Independent Engineer's Report (the "I.E. Report"), as well as any other agreements or documents between SoloPower and U.S. DOE concerning the U.S. DOE's conditional commitment for a loan guarantee to SoloPower that the U.S. DOE agrees may be disclosed to the CITY by SoloPower and included as Confidential Information under this Agreement ("DOE Documents"). The CITY will

**Exhibit B**

*NDA Number: 7865*

require its elected or appointed officials and employees who request to review the I.E. Report to execute the Joinder attached as Exhibit A to this Agreement prior to reviewing the I.E. Report. The Parties agree that U.S. DOE is a third party beneficiary to this Agreement and shall have the right to enforce all terms of this Agreement.

SoloPower, Inc.:

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

Printed Name: \_\_\_\_\_

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

City of Portland

Approved as to form

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

Printed Name: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**JOINDER**

Re: The Nondisclosure Agreement (“Agreement”), dated as of May 10, 2011, entered into by the City of Portland (City), and SoloPower, Inc. (“SoloPower”)

In your capacity as an elected or appointed official or employee of the City, the City will provide you with access to the I.E. Report or other DOE Documents, which are Confidential Information of SoloPower under the Agreement.

In consideration of furnishing the Confidential Information, you hereby certify and acknowledge by signing below, your agreement to the following:

1. You acknowledge that City and SoloPower have entered the Agreement, a copy of which has been provided to you and is attached hereto. All defined terms not defined herein shall have the meaning ascribed to them in the Agreement.
2. You hereby represent that you have reviewed the terms of the Agreement, and that you agree to comply with all duties and obligations as if you were a party to the Agreement. Without limiting the generality of the foregoing, you agree to keep all Confidential Information strictly confidential in accordance with the terms of the Agreement

Please indicate your acceptance of the terms hereof by executing this Joinder and returning a signed copy to us.

Sincerely,

City of Portland

Agreed and Accepted to by:

\_\_\_\_\_  
Name:

Title:

Attachment: Nondisclosure Agreement dated May \_\_\_\_, 2011

**Exhibit C**

(Placeholder)

## ORDINANCE No.

\*Authorize Loan Guarantee Agreement with Oregon Department of Energy with respect to SoloPower, Inc. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. SoloPower, Inc. (SoloPower) desires to construct facilities in the City of Portland that when completed and at full capacity, are expected to produce approximately 400MW of thin film photovoltaic modules annually (the "Solar Facilities");
2. SoloPower anticipates developing the Solar Facilities in four phases, at an estimated cost of approximately \$\_\_\_\_\_, for the building out of four high volume manufacturing ("HVM") lines;
3. SoloPower estimates that it will employ at least 100 permanent, full time (FTE) positions at the time of the completion of the first HVM line at an average salary of \$51,000 per year plus a benefits package, and could employ an aggregate projected 481 FTE positions upon completion and ramp up of all four HVM lines;
4. SoloPower intends to construct the Solar Facilities in the Portland Enterprise Zone which was established by City Council on March 5, 2008 by Resolution No. 36583, and intends to apply for enterprise zone benefits pursuant to State law and City policy;
5. SoloPower estimates that after completion of construction of the Solar Facilities, it will purchase goods and services from local firms and businesses in an aggregate amount of approximately \$\_\_\_\_\_ per year;
6. SoloPower has received a conditional commitment from the U.S. Department of Energy Loan Programs Office for a \$197 million loan guarantee (DOE Loan Guarantee), which will support construction of the Solar Facilities;
7. SoloPower has secured a loan commitment from the Oregon Department of Energy ("ODOE") for a \$20 million State Energy Loan Program ("SELP") loan for the Solar Facilities;
8. SoloPower has received a pre-certification from ODOE for a Business Energy Tax Credit ("BETC") for the Solar Facilities in the amount of \$20 million (which has a cash value of approximately \$14 million if sold to a pass through partner);
9. SoloPower has identified three sites in the Portland Enterprise Zone that are suitable for locating the Solar Facilities in the Rivergate Industrial Area of the City of Portland (the Bybee Lake Logistics Center I at 7824 N Leadbetter Rd., the

Marine Drive Distribution Center at 6308-6310 N Marine Drive, and the Rivergate Logistics Center, 8929 N Ramsey Blvd.), and SoloPower intends to lease one of these sites or a similar site located within the City of Portland Enterprise Zone (each an "Portland Enterprise Zone Lease"), provided that (1) upon due diligence by SoloPower, at least one of the identified sites adequately meets the requirements for the Solar Facilities, (2) the incentives identified in this MOU are provided to SoloPower, and (3) SoloPower is able to reach reasonable lease terms with a building owner;

10. The City of Portland and the Portland Development Commission (PDC) have expressed interest in providing a loan guarantee (the "Loan Guarantee") in exchange for SoloPower developing the Solar Facilities in the City of Portland;
11. The loan guarantee will be for \$5 million of the \$20 million SELP loan and will initially pledge non-tax City revenues, but will be tied to an agreement with the Portland Development Commission whereby PDC will backfill those revenues if the guarantee is called upon by replacing City funding in a tax increment financing-eligible project;
12. In addition to providing community benefits required by law and City policy, SoloPower has agreed to provide additional benefits including those described in Exhibit C hereto;
13. SoloPower has requested that the City waive Sections 10.2 and 10.6 of the City of Portland's Enterprise Zone Policy, adopted by City Council on March 5, 2008, and amended on May 5, 2010, which provisions create contingent liabilities that place at risk SoloPower's ability to obtain the DOE Loan Guarantee;
14. City Council finds that waiving such provisions is in the public interest given i) the large financial investment SoloPower shall make within the City of Portland, ii) the large number of quality jobs SoloPower shall create in Portland, iii) the sizable amount of anticipated local procurements that SoloPower intends to make with local businesses, and iv) the additional community benefits that SoloPower has agreed to provide; and
15. The City of Portland and SoloPower will work together to identify a City-owned property in Portland for a significant demonstration project employing SoloPower thin film modules in order to further the City's effort to incorporate renewable energy into City-owned properties and to utilize locally manufactured products, provided that the Parties are able to reach agreement on mutually acceptable terms.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized to execute a Loan Guarantee Agreement with the State Department of Energy in a form substantially similar to the attached Exhibit A,

and a Nondisclosure Agreement in a form substantially similar to the attached Exhibit B.

- b. The City Council agrees to waive Sections 10.2 and 10.6 of the City of Portland's Enterprise Zone Policy as it relates to current and future agreements with the Portland Development Commission pursuant to Enterprise Zone applications by SoloPower related to the Solar Facilities.

Section 2. The Council declares that an emergency exists because delay in entering these agreements could result in the loss of the opportunity for the City of Portland; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

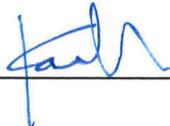
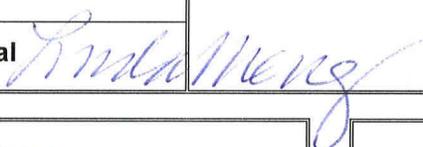
Passed by the Council:

Mayor Sam Adams  
Prepared by: Linda Meng:cj  
May 12, 2011

**LaVonne Griffin-Valade**  
Auditor of the City of Portland  
By:

Deputy

\*Authorize Loan Guarantee Agreement with Oregon Department of Energy with respect to SoloPower, Inc.  
(Ordinance)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Sam Adams</b>	CLERK USE: DATE FILED <u>MAY 13 2011</u>
<b>COMMISSIONER APPROVAL</b>	<p style="text-align: right;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u></u> Deputy</p> <p><b>ACTION TAKEN:</b></p>
Mayor—Finance and Administration - Adams <u></u>	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
<b>BUREAU APPROVAL</b>	
Bureau: Mayor's Office Bureau Head: Sam Adams	
Prepared by: Linda Meng Date Prepared: May 12, 2011	
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>May 18, 2011</b>	
City Attorney Approval <u></u>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input checked="" type="checkbox"/> <b>Start time:</b> <u>2:30</u>  <b>Total amount of time needed:</b> <u>45min</u> (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz		
2. Fish	2	
3. Saltzman		
4. Leonard		
Adams		