

**PHOTOVOLTAIC INSTALLATION AGREEMENT  
FOR Tillamook PUD Headquarters**

**PARTIES:** Tillamook PUD (TPUD)  
1115 Pacific Ave.  
Tillamook, OR 97141  
(800) 422-2535

TBD Solar/Electric ☺ (Contractor)

(503) 555.5555

**RECITALS:**

Contractor is engaged in an independent business, is licensed (if required) and qualified to do business in the State of Oregon and will comply with all local, state and federal laws regarding taxes and licenses. TPUD is a customer-owned electric utility providing electric service to most of Tillamook County and parts of Clatsop and Yamhill Counties in Oregon.

**AGREEMENT:**

The parties to this Contract agree as follows:

- I. **Scope of Work:** Contractor shall furnish all of the materials, perform all of the solar facility installation work, and provide all documentation as described in Exhibit A – Scope of Work.
- II. **Time of Completion:** The work to be performed under this contract shall be commenced on or before August 3, 2012 and shall be completed on or before August 17, 2012.
- III. **The Contract Price:** TPUD shall pay Contractor for the materials and labor to be performed under this agreement in an amount not to exceed the sum of \$39,000.00 (thirty nine thousand dollars).
- IV. **Progress Payments:** Contractor shall invoice for, and TPUD shall make, payments under this contract in accordance with the following schedule:
  - 20% (twenty percent) of the Contract price, or \$7,800.00 (eight thousand dollars) within 30 (thirty days) of Contract execution and after Contractor has provided TPUD with proof of insurance as specified in Article XIII.
  - 60% (sixty percent) of the Contract price, or \$23,400.00 (twenty-four thousand dollars) within 30 (thirty) days of completion of the installation of the solar system and data monitoring system as described in Exhibit A – Scope of Work.
  - 20% (twenty percent) of the Contract price, or \$7,800.00 (eight thousand dollars) within 30 (thirty days) of fulfillment of remaining Contract obligations, including dissemination of appropriate warranties, permits and other appropriate documents, as described in Exhibit B – Project Documentation Checklist.

- V. General Provisions:** Any alterations or deviation to Articles I. – IV. above, including but not limited to any such alteration or deviation involving additional materials and/or labor costs, will be executed only upon a written order for same, signed by TPUD and Contractor. If there is an adjusted charge associated with such alteration or deviation, the adjusted price must be mutually agreed in writing and added to or deducted from the contract price of this contract.
- VI. Payment Schedule:** TPUD shall pay all invoices due and owing under this contract within 30 days after receipt.
- VII. Work Quality:** All work shall be completed in a quality and good workmanlike manner and in compliance with all building and electrical codes, all other applicable laws, manufacturer's specifications, and all applicable utility requirements, including appropriate utility interconnection obligations.
- VIII. Project Approval:** Contractor shall furnish to TPUD a plan including construction and equipment specifications for solar facilities, a description of the work to be done, and the materials/equipment to be used and/or installed. Contractor shall obtain TPUD's written approval for such plans, drawings, specifications, materials, and equipment prior to the commencement of the work, and prior to any payment to Contractor. All equipment and materials shall be provided with original manufacturers' warranties where and as applicable.
- IX. Project Coordination:** Contractor shall provide TPUD with a schedule for the completion of the work. TPUD recognizes that Contractor will need to gain physical access to TPUD's Headquarters in order to perform the work, and TPUD will grant Contractor access to the Headquarters during normal business hours and upon two (2) business days advance notice from Contractor.
- X. Licensing:** To the extent required by the law all work shall be performed by individuals duly licensed and authorized by law to perform said work.
- XI. Subcontractors:** Contractor may at its discretion engage subcontractors to perform work hereunder, provided Contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this Contract. All subcontractors shall be bound under the same obligations as Contractor.
- XII. Release/Waivers:** Contractor shall furnish TPUD appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due.
- XIII. Amendments:** All amendments to the terms of this Contract shall be in writing and signed by both Contractor and TPUD. Such Amendments shall be incorporated in and become a part of the Contract. Payment for all tasks (time and equipment) under this contract shall not exceed \$39,000.00 (thirty nine thousand dollars), except as otherwise indicated in a duly ordered and executed Amendment.
- XIV. Insurance:** Contractor warrants that it has and will maintain insurance coverage adequate for the work being performed, specifically including but not limited to the following: 1.) Occurrence-based commercial general liability insurance (including contractual liability and products and completed operations coverage) with a combined

single limit of not less than \$1,000,000.00 (one million dollars) each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000.00 (two million dollars); 2.) Workers compensation insurance as required by law; and 3.) Automobile Liability Insurance, of not less than \$1,000,000.00 (one million dollars) per occurrence. TPUD shall be named as Additional Insured on all policies of insurance required.

- XV. Permits:** Contractor shall at its own expense obtain all permits necessary for the work to be performed.
- XVI. Site maintenance:** Contractor agrees to remove all debris and leave premises in clean condition, and to restore the landscaping to its original condition.
- XVII. Warranty of Work:** Contractor warrants all work for a period of 60 (sixty) months following completion. If the workmanship or materials are found to be defective or not in conformance with this Contract, Contractor shall repair and/or replace the defective work within thirty (30) days of notice from TPUD, at Contractor's sole cost and expense.
- XVIII. Theft Prevention:** All equipment installed on the exterior of the building including: modules, inverter, and/or AC/DC disconnects **MUST BE INSTALLED WITH APPROPRIATE THEFT PREVENTION MEASURES TAKEN.** These may include, but are not limited to: breakaway fasteners, tamper resistant fasteners and/or tack welding of fasteners.
- XIX. Contractor's Status:**
- Contractor is an independent contractor and is not an employee of TPUD.
  - Contractor shall furnish all equipment, tools and supplies to accomplish the assigned work, except as agreed to in writing by both TPUD and Contractor.
  - Contractor maintains control over the manner in which the tasks are to be performed and the products made.
  - TPUD will withhold no payroll taxes, Social Security, or workers' compensation taxes for Contractor. These items are solely the responsibility of Contractor.
- XX. Non-Disclosure:** "Confidential Information" means any information that derives actual or potential economic value from not being generally known to, and not being readily ascertainable by proper means by, persons who can obtain economic value from its disclosure or use. Without limiting the generality of the foregoing, Confidential Information of TPUD includes: any information that has been entrusted to TPUD by third parties, which Contractor knows or should know is confidential. Contractor covenants that during and after the term of this Contract, Contractor shall not disclose to anyone (except to the extent necessary for Contractor to perform duties hereunder or as required by law) any confidential information concerning the business or affairs of TPUD which Contractor may acquire in the course of or incident to his employment. This covenant shall survive the termination of this Contract.
- XXI. Conflict of Interest:** Contractor acknowledges that TPUD is a nonprofit organization whose primary goal is to provide safe, reliable electric service to its service territory on a cost-effective basis. Contractor further acknowledges that it is important to TPUD that Contractor perform its Tasks without being subject to any conflicts of interest which might interfere with the accomplishment of the Tasks. Therefore, Contractor represents

that it has no conflicts of interest that might interfere with its performance under this Contract. Contractor further represents that it will immediately inform TPUD of any conflicts which arise or may rise during the term of this Contract by written notice to TPUD. TPUD and Contractor shall immediately address any such conflicts or potential conflicts as they may arise. If Contractor presently has any obligations or affiliations from which such a conflict might in the future arise, Contractor will provide written notice to this effect to TPUD on or before execution of this contract.

- XXII. Term of Contract:** The term of this Contract will expire when all tasks are complete (specifically including the Warranty of Work specified in Article XVI.), TPUD's allocated budget is expended, or upon mutual agreement between the Parties, whichever first occurs.
- XXIII. Termination and Default:** Should Contractor fail to timely or satisfactorily complete the Project, Contractor shall be liable for any damages caused TPUD thereby. Should Contractor default on the Contract, or, for any reason, should TPUD so desire, TPUD may terminate Contractor's work hereon, and TPUD shall pay Contractor for Contractor's time for work to date, determined by multiplying the contract price by the percentage of project completion, as determined solely by TPUD, less, should the termination be caused by Contractor's default, on the contract, any damage caused by Contractor's default. Upon Contractor's default, TPUD shall have all remedies provided at by law or in equity, and TPUD may pick and choose any remedies, non-exclusively, and combine remedies, as it deems best.
- XXIV. Liquidated Damages.** Time is of the essence in this Contract. Should the Contractor neglect, refuse or fail to achieve completion of the work by the completion of work date, described in Article II above, after giving effect to extensions of time, if any herein be provided for, then, in that event, and in view of the difficulty of estimated with exactness damages caused by such delay, TPUD shall have the right to deduct from and retain out of such monies which may be then due or which may become due and payable to the Contractor, the sum of \$100 per day for each and every day that completion is delayed beyond the specified time, as liquidated damages and not as a penalty. If the amount due and to become due from TPUD to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to TPUD the amount necessary to effect such payment in full; provided, however, that TPUD shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.
- XXV. Indemnification and Limitation of Liability:** Each Party will indemnify and defend the other Party and its directors, officers, employees, agents, representatives, and affiliates and hold them harmless from and against any and all losses, liabilities, damages, claims, suits, actions, judgments, assessments, costs and expenses, including without limitation interest, penalties, attorney fees, any and all expenses incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation asserted against, imposed on, or incurred or suffered by any of them, directly or indirectly, as a result of or arising from the negligent or wrongful acts or omissions of the other Party, from any breach of this Agreement by the other Party, or from any finding, judgment or other determination or settlement whereby TPUD is deemed or considered to be the employer of Contractor or of Contractor's Personnel.

- XXVI. Arbitration:** Any disputes which may arise under this Agreement and which cannot be resolved by the Parties through good faith negotiation will be, in order to ensure rapid and economical resolution, submitted to final and binding arbitration in Portland, Oregon before Arbitration Service of Portland, Inc. ("ASP") according to its rules, provided, however, that (i) any dispute where the amount in controversy is less than \$50,000.00 (fifty thousand dollars) will be resolved before a single arbitrator, and (ii) the Parties remain free to agree in connection with any particular dispute that they may arrange for arbitration outside of ASP. Any arbitration award will be treated as Confidential Information.
- XXVII. Notices:** Any notice shall be in writing and delivered in person or mailed, properly addressed and postage prepaid, to a party at the address first specified above and to the attention of the persons specified below. Notices are deemed to have been given upon personal delivery or, if mailed, at the expiration of the third day after date of deposit in the U.S. mail.
- XXVIII. Force Majeure:** Notwithstanding anything contained in this Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, or any like cause beyond its reasonable control unless such delay or failure in performance is expressly addressed elsewhere in this Agreement.
- XXIX. Governing Law and Venue:** This Agreement will be interpreted and enforced according to the laws of the state of Oregon and any proceeding to compel arbitration or to enforce an arbitration award is to be brought against any of the Parties in Tillamook County Circuit Court of the State of Oregon and each of the Parties consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.
- XXX. Attorney Fees and Costs:** In the event that any Party initiates proceedings to compel arbitration or to enforce this Agreement or enjoin its breach, the prevailing Party or Parties will be awarded its or their reasonable attorney fees and costs at arbitration, trial and on any appeal as set by the trier of fact, including any bankruptcy proceedings.

**SIGNATURES:**

The individuals signing below hereby represent that they are authorized to enter into this Agreement on behalf of the Party for whom they sign.

**Tillamook PUD**

**TBD Solar/Electric**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

<b>TPUD Contact Information:</b>	<b>Contractor Contact Information:</b>
Blanc, Terrence	
Utility Asset Supervisor, TPUD	
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tblanc@tpud.org	