

OPTION AGREEMENT FOR SOLAR SITE LICENSE

THIS OPTION AGREEMENT FOR SOLAR SITE LICENSE (“Option Agreement”) is made and entered into as of _____, 2013 (the “Effective Date”) by the State of Oregon, acting by and through its Oregon Department of Transportation (ODOT) and (*Solar Development Company Name*), a(n) (*state of incorporation/organization*) [*company/corporation/limited liability company/etc.*] (“Developer”).

1. **Basic Provisions.** The following terms shall have the meanings set forth below:

- 1.1 “Developer” (*Solar Development Company Name*)
- 1.2 “Option Consideration” The option consideration shall be based on RECs or an option fee paid to ODOT. The Option Consideration shall be, at the election of ODOT, either the consideration described in subsection 1.2.1, or the consideration described in subsection 1.2.2, or a combination of both:
- 1.2.1 (*Number*) Renewable Energy Credits (“RECs”) for any year of the Option Period based on a generating capability of at least 250 kilowatts per acre at the optioned site. (For example, the annual Option Consideration for an eight-acre optioned site equals the number of RECs attributed to the generation of at least 2,000 kilowatts.). The RECs shall be sourced from renewable energy projects physically located entirely in Oregon. The RECs shall be retired in the WREGIS tracking system on behalf of ODOT. Each REC represents the environmental attributes of one (1) megawatt-hour of electricity generation from a renewable energy project; or
- 1.2.2 The Option Fee for any year of the Option Period shall be based on the total estimated number of installed kilowatts of the solar system possible at the optioned site. The estimated number of installed kilowatts of the system shall be at least 250 kilowatts per acre at the optioned site. The Option Fee for any year of the Option Period

shall equal ten dollars (\$10) per estimated installed kilowatt of the system.

1.3 “Option Period”

The period during which the Option may be exercised, commencing on the Effective Date and continuing until __: __ p.m. Pacific Time on _____, 2016.

1.4 “Optioned Acreage”

Certain property located in (*County Name*) County, State of Oregon more particularly described in Exhibit A, which is attached and incorporated into this Option Agreement by this reference.

1.5 Address for Notices

(a) ODOT:

Name: Oregon Department of Transportation
Street: 355 Capitol Street NE, MS 32
City, State, Zip: Salem, OR, 97301-3871
Phone: 503-986-3193

(b) Developer:

Name:
Street:
City, State, Zip:
Phone:

2. **Grant of Option.** ODOT grants to Developer the exclusive right and option (the “Option”) to obtain a license from ODOT to evaluate, develop, construct, own, maintain, access, and operate solar photovoltaic electrical generating equipment at the Optioned Acres together with those ancillary rights that are necessary for Developer to use the Optioned Acres for electrical distribution, transmission, communication, and access. If Developer exercises the Option as described herein, the parties will negotiate in good faith to sign a Solar Site License Agreement in substantially the same form as, and which encompasses the same terms contained in (unless otherwise agreed between ODOT and Developer), Exhibit B to this Option Agreement, which is attached and incorporated into this Option Agreement by this reference. This Option is made and given on the terms and conditions set forth in this Option Agreement. This Option Agreement gives Developer no right or expectation that ODOT and the Developer will execute a Solar Site License Agreement that contains precisely the same provisions as those set forth in Exhibit B. Differing conditions that affect the site, changes or differences in regulatory restrictions that affect the Optioned Acres, and modifications in Renewable Energy Credit regulations and conditions may require Solar Site License Agreement provisions that depart from those stated in Exhibit B. This Option Agreement, if Developer exercises the Option as provided in Section 4 of this Option Agreement, obligates ODOT only to negotiate in good faith during the Option Period with Developer, and only with Developer, to endeavor to establish a Solar Site License Agreement that addresses the subject matter addressed in Exhibit B. This Option shall not interfere with any official transportation purpose of the Optioned Acres.

3. **Option Consideration.** As consideration for the Option, on the Effective Date and on January 1 of each year until the Option is exercised or this Option Agreement is terminated, Developer shall provide to ODOT the annual Option Consideration. The Option Consideration shall not be prorated or refunded for partial years. [The annual Option Consideration is \$____(Dollars, U.S.). *[OR]* The annual Option Consideration consists of Developer's provision to ODOT of proof of the retirement of ____ RECs in the WREGIS tracking system on ODOT's behalf.]

4. **Exercise of Option.** Developer may exercise the Option at any time during the Option Period by providing written notice to ODOT. Upon receipt of such written notice, the parties shall negotiate in good faith with the objective of promptly completing and signing a Solar Site License Agreement in substantially the same general form, and encompassing terms that address the same considerations contained in, Exhibit B to this Option Agreement.

5. **Performance Requirements.** Developer shall submit a complete request for interconnection of a solar photovoltaic system to (name of interconnection utility) no later than one (1) year after the Effective Date.

6. **Representations, Warranties and Covenants.** ODOT represents and warrants to Developer that it owns the Optioned Acres in fee simple, subject to no liens or encumbrances except as disclosed in writing to Developer prior to the execution of this Option Agreement. ODOT further represents and warrants to Developer that ODOT and each person signing this Option Agreement on behalf of ODOT has the authority to execute and deliver this Option Agreement and grant the interests herein granted. All government agencies and persons having any ownership or possessory interest in the Property are signing this Option Agreement. ODOT also represents that, upon exercise of the Option, ODOT will obtain any necessary consent or subordination agreement from any lienholders and any and all tenants having a possessory interest in the Optioned Acres at the time the Option is exercised.

7. **Access to Optioned Acreage for Inspection and Resource Evaluation.** Subject to the limitations of this Section, ODOT hereby grants Developer a temporary, conditional right to access the Optioned Acres during the Option Period for Developer and its employees, agents and permittees to conduct inspection, survey, design of improvements, tests, and to take other actions reasonably related to the investigation by Developer of the suitability of the Optioned Acres for solar energy development, including, but not limited to conducting monitoring activities, meteorological studies, and soil, environmental, archeological, and geologic studies on the Optioned Acres. Developer shall provide three (3) business days prior written notice (email will be acceptable) to ODOT of Developer's intent to access the Optioned Acres. Developer shall comply with ODOT's conditions and specifications for the time, place, and manner of such access; provided that such conditions and specification shall not unduly burden Developer's ability to access the Optioned Acres for the purposes described in this Section.

7.1 Developer agrees to indemnify and hold harmless the State of Oregon, the Oregon Transportation Commission, ODOT, and their officers, agents, and employees from all liability, loss, claims, damages, cost and expense caused by or resulting from the exercise by Developer, its employees, agents, or permittees, of Developer's right of access to the Optioned

Acres. The foregoing indemnity provision shall survive the exercise of the Option and the termination of this Option Agreement.

8. **Defaults; Termination.**

8.1 **Defaults.** Each of the following events shall constitute an event of default and shall permit the non-defaulting party to terminate this Option Agreement and pursue all other appropriate remedies.

8.1.1 The failure or omission by Developer to provide the Option Consideration when due, and such failure or omission has continued for thirty (30) calendar days after ODOT has provided written notice of the default to Developer;

8.1.2 The failure or omission by either party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Option Agreement, and such failure or omission has continued for thirty (30) calendar days (or such longer period required to cure such failure or omission, not to exceed one hundred eighty (180) calendar days, if such failure or omission cannot reasonably be cured within such thirty (30) day period) after written notice from the other party; or

8.1.3 A party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within sixty (60) calendar days after filing.

8.2 **Termination by Developer.** Developer may terminate this Option Agreement, without termination fee, upon thirty (30) calendar days prior written notice of termination and payment of the 3-year Option Consideration in full or upon one hundred eighty (180) calendar days prior written notice of termination if the Option Consideration is paid as due through the termination date.

8.3 **Termination by ODOT.** ODOT may terminate this Option Agreement immediately, in whole or in part, at its sole discretion, upon a finding by ODOT that it is in the state's best interest, by delivering to Developer written notice of the termination. Under this Section, ODOT's determination of what is in the state's best interest may include, but is not limited to, for public safety or highway safety purposes, for transportation planning or development purposes that are consistent with state and Federal Highway Administration limited access freeway policies, to comply with any transportation construction or development project adopted in an approved state transportation plan, or to comply with any change in state, federal or local policies, laws or regulations, or receipt of legislative, executive, or administrative directions that affect the Optioned Acreage. Upon ODOT's termination of the Option Agreement under this Section, ODOT shall reimburse Developer only for those expenses actually and reasonably incurred by Developer in the exercise of Developer's rights under Section 7 of this Option Agreement that are necessary to the investigation by Developer of the suitability of the Optioned Acreage for solar energy development and are incurred prior to the date of Developer's receipt of notice of termination under this Section 8.3, up to an amount not to exceed \$150,000.

9. **Effect of Option Agreement; Interest in Real Property.** The parties intend that this Option Agreement create a valid and present interest in the Optioned Acres in favor of Developer. Therefore, this Option shall be deemed an interest in the Optioned Acres, personal to Developer, that shall be binding on ODOT and its successors and assigns and shall inure to the benefit of Developer and its permitted successors and assigns. ODOT covenants and agrees that during the Option Period, ODOT shall not convey the Optioned Acres or any interest therein or permit any lien or encumbrance to attach to the Optioned Acres unless the transferee or lien holder, as the case may be, shall agree, in writing, to be bound by this Option Agreement. ODOT shall also protect and defend Developer's interest in the Optioned Acres and its rights and benefits under this Option Agreement.

10. **Assignment.** Developer shall at all times have the right to sell, assign, encumber, or transfer all or any part of its rights and interests under this Option Agreement to any affiliate of Developer with ODOT's written consent and upon such reasonable terms and conditions as ODOT may require; provided, however, that the term of any such transfer shall not extend beyond the Option Period and that any and all such transfers shall be expressly made subject to all of the terms, covenants and conditions of this Option Agreement. No such sale, assignment, or transfer shall relieve Developer of its obligations under this Option Agreement unless Developer assigns its entire interest hereunder, in which event Developer shall have no continuing liability.

11. **Miscellaneous.**

11.1 **Recording of Memorandum.** Concurrent with the execution of this Option Agreement the parties shall execute a Memorandum of Option in the form attached hereto as Exhibit C and incorporated herein by this reference. Developer may, at Developer's election, cause the Memorandum of Option to be recorded in (*name of project site county*) County.

11.2 **Further Assurances.** Upon exercise of the Option, and at the request of either party, each party shall promptly execute and deliver all other or further documents and instruments that either party reasonably may require or desire, including, without limitation, the Solar Site License Agreement, a memorandum of the Solar Site License Agreement for recording, and reasonable estoppel certificates or similar statements that either party or its lenders may request from time to time.

11.3 **Entire Agreement.** This Option Agreement, together with its attached schedules and exhibits, contains the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior agreements, discussions or understandings, written or oral, related to the development of a solar photovoltaic project on the Optioned Acres are superseded by this Option Agreement and shall be of no force or effect. No addition to or modification of any term or provision of this Option Agreement shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

IN WITNESS WHEREOF, the parties have executed this Option Agreement as set forth below.

Oregon Department of Transportation

By: _____
Name: _____
Title: _____

(Solar Development Company Name)

By: _____
Name: _____
Title: _____

EXHIBIT A
MAP AND DESCRIPTION OF THE OPTIONED ACRES

EXHIBIT B
FORM OF SOLAR SITE LICENSE AGREEMENT

EXHIBIT C
FORM OF MEMORANDUM OF OPTION