

**INTERLOCAL AGREEMENT
BETWEEN
THE PORT OF CAMAS WASHOUGAL AND PUBLIC UTILITY DISTRICT NO. 1 OF CLARK COUNTY
REGARDING COMMUNITY SOLAR**

This Interlocal Agreement (“ILA”) is entered into by and between the Public Utility District No. 1 of Clark County, a Washington state special purpose district (hereafter “Clark”) and the Port of Camas Washougal (“Port”), a Washington state public port district, also referred to collectively as the “Parties” and individually as a “Party”, pursuant Chapter 39.34 RCW.

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each entity is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each entity to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting entities; and

Whereas, Clark has undertaken five Community Solar projects adjacent to one another on-site at the Clark’s Operations Center in Orchards, which location was chosen for its prime solar exposure, visibility and cost-effective proximity to existing electrical infrastructure. The Community Solar arrays began generating electricity to the Clark Public Utilities electric grid in June 2015.

Whereas, for more than a year, Clark and Port staff have been meeting and coordinating joint community solar projects with the objectives of creating a local renewable energy opportunity for the two entities’ mutual customers and highlighting each organizations commitment to clean energy.

Whereas, Clark and the Port desire to partner on the next five community solar projects collectively called the Community Solar East Project, consisting of developing, constructing, installing and maintaining solar arrays on select Port buildings as further described herein (the "Project").

Whereas, the Washington State University Extension Energy Program ("WSU Program") administers a Community Solar Incentive Program whereby certain qualified entities can apply for project certification in order to receive certain incentive payments based on the size of their project and development costs.

Whereas, Clark expects to be a recipient of an incentive payments from the WSU Program for one or more projects that are part of the Community Solar East Project.

Whereas, the Parties wish to memorialize their agreement on the allocation of roles, responsibilities, and costs of the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Clark and the Port agree as follows:

I. Purpose/Objective

This ILA memorializes the Parties' agreement on the allocation of roles, responsibilities, and costs of the Project. Additional Project details are as described below:

A. Project System and Structures:

PUD will develop five solar energy systems that will be divided, installed and separately metered solar production as follows across five Port buildings:

- Building #18: 199kW facility located at 4060 S. Grant Street, Washougal, WA
- Building #17: 150Kw facility located a 4225 S. Lincoln Street, Washougal, WA
- Building #15: 150Kw facility located at 4125 S. Lincoln Street, Washougal, WA
- Building #14: 150Kw facility located at 3801 S. Truman Street, Washougal, WA
- Building #12: 150kW facility located at 3830 S. Truman Street, Washougal, WA

All Project facilities installed by Clark on the Port's building will remain Clark's property and under its sole control and ownership.

B. Project Funding:

Total Project costs are estimated to be near \$1.4 million, which includes in-kind matching staff costs with Clark Public Utilities and the Port of Camas Washougal.

A portion of the Project will be funded by customers participating in this community solar program through participation fees, divided amongst three customer participant classes:

- Residential,
- Business, and
- Government entities.

In exchange, these participants will receive energy generation credits on their electric bills with Clark based on the number of units purchased.

Another portion of the Project will be funded by the WSU Program for low-income residents. All generation credits for this group will be used to fund a low-income assistance program at Clark.

In the event Project costs are higher than projected, Clark will assume any excess Project costs.

Clark's occupation of the Port's buildings for this Project will be without rent or charge.

C. Project Timing:

1. Administrative Tasks: Expected completion by April 2023
Joint-Agency Legal Agreement, Formal Bid Development, Sales Strategy Developed, Electric Infrastructure Procurement, Submit Permit Applications (via contractor), BPA Communications
2. Executed Contract with Installing Contractor: Expected completion by June 2023
One formal bid that includes all five solar PV arrays
3. Project Installation Phase: Expected completion by December 1, 2023
Five phases across the five Port of Camas Washougal buildings
4. Commission the new Community Solar East Project: Expected completion by January 2024
Ribbon cutting ceremony with Commissioners, staff and members of the public

II. Responsibilities of Each Party

A. Clark agrees to:

1. Design, manage, construct, install and maintain all components necessary for Project success, including affixing the Project components to the Port-owned buildings described in Section 1.A herein above.
2. Oversee Formal Contract Bid Development and execution.
3. Produce and submit all documentation needed to comply with the WSU Program. This WSU Program documentation currently requires verifying that the

installation, or a portion of the installation, is dedicated for low-income customers, and submittal of a precertification application, which includes but may not be limited to a project prospectus; description of the beneficiary(s), any program terms, methods, and/or intent, and a description of reasonable on-going administrative and maintenance costs to be charged.

4. Develop participant sales strategy,
5. Allocate participant annual energy credits, and
6. Obtain insurance coverage for Project components.
7. Maintain the Project facilities at the installed locations for the duration of this Agreement.
8. Decommission the solar system at the end of the term, unless the Port wishes to purchase the units from Clark. If the solar system is removed at the end of the term, Clark will bear the cost of patching any holes in the roofs of the Project buildings that are created by the removal of the equipment.

B. The Port agrees to:

1. Host the community solar array over five Port buildings for a minimum term of twenty-five years. In the event any Port host building is repurposed by the Port, in its sole discretion and determination during this initial twenty-five year term which requires removal of the Project components, the Port agrees to pay for the cost of relocation of the Project components to an equivalent Port facility acceptable to Clark. In the event of relocation, the Port will also be responsible and indemnify Clark against any costs associated with the temporary or permanent interruption of that portion of the Project (including, but not limited to any customer claims for incentive payments, generation credits, and reimbursement sought by the WSU Program associated with early termination of the Project).
2. Assist Clark with Project components' ongoing operations and Maintenance.
3. At its expense the Port will maintain all structural components of its buildings (including, but not limited to the roofs) being used for the Project, but excluding Project components. Except as provided in Section I(B)(8) above, Clark will not be responsible for any structural/roof repairs or maintenance on the buildings used to site the Project facilities, unless such damage is caused by Clark's negligence.

4. During construction of the Project, the Port shall provide Clark and its Contractor's access to the Port's buildings upon request.
5. After construction, the Port shall provide Clark with access to its buildings and Clark's Project facilities within 24 hours' notice unless such access is required to address emergency or hazardous conditions, then such access will be provided as soon as possible.
6. The Port shall maintain adequate property insurance coverage for all buildings used for the Project.

C. Except as otherwise provided in this Agreement, the Port will not be responsible for the cost of construction or maintenance of the Project.

III. Indemnification

A. Clark agrees to defend, indemnify and hold the Port, its' officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the Clark's negligent actions related to the installation, maintenance, repair and removal of the Project components including any claims from Port tenants in Port buildings hosting the Project or from any third parties.

B. The Port agrees to defend, indemnify and hold Clark, its' officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the Port's negligent actions related to the Project and any claims from its tenants in the Port buildings hosting the Project, except to the extent such claims are attributed to Clark's negligence.

C. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

The Parties recognize that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this ILA against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

D. No liability shall attach to any of the Parties by reason of entering into this ILA except as expressly provided herein.

E. The Parties' respective indemnification obligations contained in this Section III survives termination of this ILA.

IV. Administration

No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties shall be jointly responsible for administering the performance herein. The Parties will not acquire any jointly owned real or personal property in connection with performance of this Agreement.

V. Term of ILA

This ILA shall take effect on the date of the last authorizing signature affixed hereto and shall remain in effect for twenty-five years from the date that the installation of Project components is complete and accepted by Clark unless terminated sooner by the mutual written agreement of the Parties.

VI. Entire Agreement

This ILA sets forth all terms and conditions between Clark and Port with respect to the subject matter addressed herein and supersedes any and all prior agreements as to such matter, oral or otherwise. Any changes to this ILA shall be in written form, duly authorized by the respective legislative body of the Parties and signed by a duly authorized signatory of each Party.

VII. Recording

Prior to its entry into force, this ILA shall be filed with the Clark County Auditor's Office or posted upon each Party's websites or other electronically retrievable public source as required by RCW 39.34.040.

VIII. Notice

Any notice required under this ILA shall be to the Party and address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

CLARK

Clark Public Utilities

Attn: Director of Energy Resources

Re: Community Solar ILA with Port of Camas Washougal

Address: P.O. Box 8900

Phone: 360-992-3000

Email: CommunitySolarEast@clarkpud.com

PORT OF CAMAS WASHOUGAL

Attn: (ADD)

Re: Community Solar ILA with Port of Camas Washougal

Address: 24 South A Street, Washougal, WA 98671

Phone: 360-835-2196

Email: _____

X. Interpretation and Venue

This ILA shall be governed by the laws of the State of Washington as to interpretation and performance. Venue for enforcement of this ILA shall be the Superior Court of Clark County.

XI. Legal Relations.

A. Independent Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this ILA is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this ILA. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

B. Legal obligations. This ILA does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this ILA shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.

D. Records and Audit. During the term of this ILA, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this ILA and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

E. Limits of Financial Obligations/Property Ownership. Except as provided above, each Party shall finance its own conduct of responsibilities under this ILA. No ownership of property will transfer as a result of this ILA.

F. Abandonment. If the Project is abandoned, then this ILA shall be of no further force or effect.

G. Assignment. Neither Party to this ILA shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this ILA, without the prior written approval of the other.

H. Third Party Beneficiaries. This ILA is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this ILA.

I. Equal Drafting. This ILA has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this ILA.

J. Severability. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.

K. Amendments. This Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties.

[Signatures Appear on Next Page]

PUBLIC UTILITY DISTRICT NO. OF CLARK COUNTY

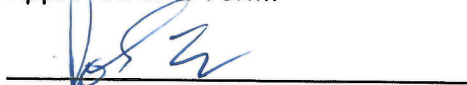


By: Lena Wittler

It's: CEO/General Manager

Date: 5-2-2023

Approved as to Form:



John Eldridge/General Counsel

PORT OF CAMAS WASHOUGAL



By: David Ripp

It's Chief Executive Officer

Date: April 19, 2023

Approved as to Form:



Carolyn Lake, Port Attorney