

EFFICIENCY SERVICES AGREEMENT (GRANT Only)

This Efficiency Services Agreement (the "**Contract**") is made and entered into as of this ____ day of _____, 201_ (the "Effective Date"), by and between MPower Oregon, LLC, and Oregon limited liability company ("**MPower**"), having its principal offices at 1020 SW Taylor Street, Suite 585, Portland, Oregon and _____, an Oregon [non-profit corporation] ("**Owner**") having its principal offices at _____, for the installation of certain energy and water cost saving equipment and the provision of certain ongoing efficiency services designed to provide increased energy and water efficiency for the Owner's property and buildings, known as _____, located at _____ (the "**Project Site**"). For purposes of the Contract, each of MPower and Owner may be hereinafter referred to as a "**Party**" and collectively the "**Parties**."

RECITALS

WHEREAS, MPower, a subsidiary of Network for Oregon Affordable Housing ("**NOAH**"), provides an efficiency upgrade coordination service delivering increased affordability, comfort and health outcomes to multifamily affordable housing communities as well as improved building asset performance.

WHEREAS, Owner owns and operates the Project Site and previously directed MPower to conduct a property assessment to determine whether the Project Site has adequate energy and water savings potential.

WHEREAS, MPower assessed the utility consumption characteristics of the Project Site and the existing equipment at the Project Site, and based on the existing conditions identified a package of proposed efficiency measures as more fully described in the Efficiency Assessment and Scope (defined below).

WHEREAS, after review and acceptance of the Efficiency Assessment and Scope, Owner determined that the Project Site is in need of equipment and services designed to save energy and water and associated costs and further that it is in Owner's best interest to participate in MPower.

WHEREAS, Owner is authorized to enter into this efficiency services agreement for professional efficiency services including installation of the Efficiency Measures (as defined below) and implementation of Efficiency Services (as defined below); and

WHEREAS, Owner desires to retain MPower to coordinate completion of the Efficiency Measures and implement the Efficiency Services at the Project Site.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, and intending to be legally bound hereby, Owner and MPower hereby agree as follows:

ARTICLE 1 DEFINITIONS AND SCHEDULES

Section 1.1 Definitions.

Construction Agreement: The contract directly between Owner and Contractor providing for performance of the Project Installation by Contractor.

Contract: This Efficiency Services Agreement and all Schedules attached hereto.

Contract Term: As defined in Section 3.1 (Term of Contract).

Contractor: The qualified contractor or construction manager selected by Owner to perform and/or oversee the Project Installation.

Effective Date: As defined in the introductory paragraph.

Efficiency Assessment and Scope: The assessment report submitted to Owner that sets forth, among other things, (a) an assessment of the energy consumption characteristics of the Project Site, (b) specific energy analysis related to existing conditions at the Project Site and its operation, and (c) detailed descriptions of the recommended Efficiency Measures for the Project Site including the estimated cost of the Efficiency Measures and the targeted utility cost savings, as applicable, projected to result from the Efficiency Measures. The Efficiency Assessment and Scope is attached hereto as Schedule A.

Efficiency Measures: The efficiency measures included in the Efficiency Assessment and Scope to be installed at the Project Site as agreed by the Parties.

Efficiency Services: The efficiency services provided by MPower and its designees pursuant to the Contract.

Event of Default: As defined in Article 10 (Events of Default and Remedies).

Grant Amount: That certain amount that MPower will grant to Owner for purposes of completing the Efficiency Measures described in this Contract as more particularly set forth in Section 3.4 (MPower Financing).

Installation Acceptance: Acceptance of the Efficiency Measures by Owner pursuant to Section 3.7 (Acceptance of Efficiency Measures).

Installation Schedule: As defined in Section 4.1 (Installation Schedule).

Low Income Households: Households in which family income does not exceed 80% of the median income for the area.

Material Changes: As defined in Section 9.1 (Material Change Defined).

MPower: As defined in the introductory paragraph.

MPower Coordination Fee: The fee established as a percentage of construction costs due and payable to MPower, as further described in Section 3.3 (MPower Coordination Fee).

NOAH: As define in the first recital paragraph.

Owner: As defined in the introductory paragraph.

O&M: Operations and maintenance.

Party and Parties: As defined in the introductory paragraph.

Project: The provision of Project Site assessment and analysis, coordination of and payment for design, engineering, and installation of the Efficiency Measures as applicable, and delivery of the Efficiency Services pursuant to the Contract.

Project Installation: The provision and installation of the Efficiency Measures.

Project Site: As defined in the introductory paragraph and further described in Schedule A attached hereto.

Released Parties: Collectively, MPower, its stakeholders, funders and all service providers for the Project including, without limitation, the auditor that conducted the on-site property assessment, if any, NOAH, Energy Trust of Oregon, Craft3, and the Oregon Department of Energy.

Use Agreement: That certain [_____ Agreement] between _____ and Owner dated as of _____ and recorded with the _____ County Real Estate Records as Document Number _____ that binds the Project Site and preserves rents at an established affordability level.

Utility Usage IT Tool: As defined in Section 5.1 (Utility Usage IT Tool Platform).

Section 1.2 Schedules

MPower has prepared and Owner has approved and accepted the following Schedules which detail the technical parameters of the Project agreed to by the Parties, copies of which are attached hereto, and made a part of the Contract by reference.

Schedules:

Schedule A Efficiency Assessment and Scope

Schedule B List of Existing Technical Studies and Energy Audits provided by Owner

ARTICLE 2 AUDIT RESULTS/SAVING ESTIMATE

Section 2.1 Efficiency Assessment and Scope

MPower assessed the Project Site and prepared or caused to be prepared the Efficiency Assessment and Scope, attached hereto as Schedule A, which has been approved and accepted by Owner. The Efficiency Assessment and Scope includes all Efficiency Measures.

Section 2.2 Historical Utility Consumption and Other Project Site Data

(a) Historical Data on Energy and Water Usage; Project Site Operation

Owner has furnished data on historical energy and water usage (including by authorizing its utility suppliers to furnish energy and water usage data directly to MPower) for the Project Site for the requested historical periods. Owner has also provided information on facility maintenance and operations at the Project Site and occupancy data for the Project Site to MPower or its designee for the periods requested.

(b) Historical and Current Data on Project Site

Owner has furnished available data on the Project Site applicable to the Project, including, without limitation, facility square footage, construction type, occupancy data, hours of operation and any special conditions as set forth in Schedule A.

(c) Prior Technical Studies and Energy Audits

Owner has provided MPower or its designee with true, correct and complete copies of all prior technical studies and energy audits for the Project Site conducted within the past ten (10) years, as listed on Schedule B, if any.

(d) Acknowledgement of Reliance by MPower

Owner acknowledges and agrees that the information it has provided and/or caused to be provided on its behalf to MPower and its designees informs the Efficiency Assessment and Scope results and that MPower is relying on the accuracy and completeness of all information provided by Owner with respect to the Project Site.

Section 2.3 No Guarantee of Level of Savings

Owner acknowledges and agrees that MPower does not warrant or guarantee the annual level of energy and water cost and operations savings to be achieved as a result of the installation and operation of the Efficiency Measures and Efficiency Services under the Contract. Although the Efficiency Assessment and Scope contains measures that are targeted to provide modest cost savings to Owner as compared to pre-Contract energy and water costs for the Project Site, Owner acknowledges and agrees that actual energy and water cost savings are not guaranteed and may vary significantly from the models used in the Efficiency Assessment and Scope. Additionally, the modeled savings evidenced in the Efficiency Assessment and Scope do not account for year over year climatic variations, changes in utility rates, and Material Changes.

Section 2.4 Methods of Operation by Owner

Owner acknowledges and agrees that the estimated energy and water efficiencies will likely not be obtained unless reasonable best practices relative to methods of operation and use designed for energy and water conservation, including practices consistent with the Efficiency Services developed and delivered under this Contract, are implemented and followed by Owner, property management, and residents of the Project Site on a consistent and ongoing basis.

ARTICLE 3 CONTRACT TERMS AND SCHEDULE

Section 3.1 Term of Contract

The Contract shall be effective and binding upon the Parties as of the Effective Date and shall continue in effect until the tenth anniversary of the Effective Date (the "Contract Term").

Section 3.2. Project Installation; Payment

Owner agrees to contract directly with Contractor for performance of the Project Installation. MPower shall pay the Owner or the Contractor on Owner's behalf for the Project Installation under the Construction Agreement pursuant to Section 4.2 (Construction Agreement; Payment Arrangement) and provide certain oversight and assistance to Owner related to the Project Installation in accordance with the provisions of Article 4 (Construction and Installation Procedures).

Section 3.3 MPower Coordination Fee

Owner agrees to pay to MPower that certain MPower Coordination Fee equal to \$ _____ for Project coordination services, including without limitation initial Project assessment, scoping, costing, financing, construction, and verification. The MPower Coordination Fee is deemed earned as of the Effective Date and payable in full as of the date hereof, pro rata with payments made pursuant to the Construction Agreement, or upon construction completion and installation acceptance, in MPower's sole discretion. The MPower Coordination Fee is included in the MPower Financing and may be advanced as a portion of the Grant Amount.

Section 3.4 MPower Financing

The MPower Financing consists of a Grant Amount equal to \$ _____. The remaining funds necessary to complete the Project Installation, an amount equal to \$ _____ shall be funded by Owner (the "Owner Contribution"). Any Project Installation cost reduction shall reduce the Grant Amount. MPower agrees to advance the MPower Financing consistent with Section 4.2 (Construction Agreement; Payment Arrangement).

Section 3.5 Ownership of Efficiency Measures

Following Installation Acceptance, Owner shall own all Efficiency Measures including without limitation the equipment included within the Efficiency Measures and Owner shall bear sole risk of loss with respect to same.

Section 3.6 Acceptance of Efficiency Measures

Owner shall have five (5) business days after notification by Contractor or MPower that all or substantially all of the Project Installation has been completed to inspect and accept the Efficiency Measures, such acceptance to be evidenced by an executed certificate of installation acceptance delivered to MPower, in a form acceptable to MPower. Owner reserves the right to reject the Project Installation if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with the Construction Agreement. If Owner is notified that the Project Installation has been substantially completed, the Owner shall also be provided with a punch list on a form agreed to by the Parties, which punch list shall be subject to review and approval by the Owner. The punch list shall only include minor items to be completed following Installation Acceptance that do not prevent the Efficiency Measures from being used for the purposes intended and which will not prevent the issuance of applicable permits or certificates for such use. Acceptance of the Efficiency Measures and punch list, as applicable, and full execution of the certificate of installation acceptance will not be unreasonably withheld, conditioned or delayed by the Owner.

Section 3.7 Use Agreements

Both parties agree that this Contract is subject to the covenants, restrictions, charges and easements contained in the Use Agreements.

ARTICLE 4 CONSTRUCTION AND INSTALLATION PROCEDURES

Section 4.1 Installation Schedule

The Project Installation shall proceed in accordance with the schedule provided by Contractor in the Construction Agreement, approved by Owner, and acknowledged by MPower (the "**Installation Schedule**").

Section 4.2 Construction Agreement; Payment Arrangement

Owner and Contractor have entered or will enter into a Construction Agreement, acceptable to MPower, for the Project Installation, or a portion thereof, at the Project Site. MPower agrees to pay, up to the aggregate Grant Amount less the MPower Coordination Fee, Owner, or the Contractor directly on Owner's behalf, for amounts due under the Construction Agreement for the Project Installation including, without limitation, payment for labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Project Installation by the Contractor pursuant to the terms of the Construction Agreement and any MPower Participation Agreement signed by Contractor, as applicable. Payment for installation of Efficiency Measures covered by the MPower Grant shall be made by MPower after payment of the full Owner Contribution upon its approval and in accordance with MPower's construction draw procedures, as determined in MPower's sole discretion and requiring detailed invoices, proper lien releases and data reporting. Owner acknowledges and agrees that MPower is not performing construction management or construction services for Owner and that MPower shall not supervise or direct the Project Installation performed by Contractor under the Construction Agreement or any other party.

Section 4.3 Change Orders

Owner agrees that the Construction Agreement, as it relates to the Efficiency Measures and Project Installation, and any related design contracts cannot be amended (i.e. no change orders) and no alteration shall be made in the Project Installation without MPower's prior consent, which consent MPower may withhold in its reasonable discretion.

Section 4.4 Issues under Construction Agreement; Assignment of Rights

Owner agrees to give MPower prompt notice and reasonable opportunity to work with Owner and Contractor to facilitate the resolution of any conflict that arises under the Construction Agreement which could result in termination of the Construction Agreement prior to completion of the Project Installation. Owner hereby assigns to MPower any claims Owner may have under the Construction Agreement and any related design contracts, but such assignment shall not become effective unless and until MPower takes affirmative action to accept any such assignment as evidenced by a writing accepting the assignment delivered to Owner. In the event that Project Installation is not completed in a timely manner and/or MPower reasonably believes such Project Installation will not be completed under the Construction Contract, Owner agrees to reimburse MPower for any MPower Financing amount already advanced to Owner or Contractor within 30 days of written request.

Section 4.5 Coordination During Project Installation

MPower shall work with Owner to coordinate the activities of Contractor with those of the Owner, its employees, and agents. MPower shall work with Owner to monitor compliance of the Project Installation with the requirements of the Contract and the Construction Contract. Owner agrees to use its best efforts to coordinate and cooperate with MPower and Contractor during the Project Installation and as otherwise needed during the term of the Contract. MPower shall not take any action which would unduly interfere with the performance of business activities conducted by the Owner, its employees, or Project Site residents without prior written approval of the Owner.

Section 4.6 Limit of MPower Liability

Other than payment of amounts due Contractor under the Construction Agreement for the Project Installation performed at the Project Site in an amount not to exceed the MPower Grant Amount less the MPower

Coordination Fee, MPower shall have no liability with respect to (a) the Construction Agreement, (b) services provided by Contractor under the Construction Agreement, or (c) any actions or omissions by Contractor or any of Contractor's employees or independent contractors relative to the Project Installation or on the Project Site. Owner agrees to look solely to Contractor with any claims under the Construction Agreement or related to the actions or inactions of the Contractor or its agents.

Section 4.7 Post-Installation Verification Review of Efficiency Measures

MPower may conduct or cause to be conducted post-installation inspections on all Efficiency Measures. Post-installation inspections verify physical installation, specifications, and operations. For complex retrofit measures, the inspection may include performance test-outs to verify that the Efficiency Measures are functioning in accordance with both its published specifications and the applicable Schedules to the Contract, and determine if modified building systems, subsystems or components, if any, function properly within the new integrated environment.

MPower or its agent may inspect all Efficiency Measures and technical documentation necessary to verify accuracy and compliance with MPower requirements prior to acceptance of the Efficiency Measures by the Owner.

MPower shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by MPower or its agent. Owner acknowledges and agrees that Contractor shall only be responsible for correcting and/or adjusting deficiencies in operation of Efficiency Measures that may be observed during system testing procedures as provided in the Construction Agreement.

ARTICLE 5 EFFICIENCY SERVICES DESCRIPTION

Section 5.1 Utility Usage IT Tool Platform

As soon as practicable following Installation Acceptance, MPower may deploy a data collection IT platform for verification of actual energy and water usage and costs ("**Utility Usage IT Tool**") following the installation of the Efficiency Measures. It is anticipated that the Utility Usage IT Tool will provide automatically updating utility data to compare actual consumption with prior periods and targeted utility use. The Utility Usage IT Tool is intended to provide feedback on utility usage with the aim of promoting behavior to support consistent and ongoing performance of Efficiency Measures. MPower will use the Utility Usage IT tool to capture, collect, and retain utility data on consumption and cost. MPower will review the monitoring results to verify consumption and cost metrics, identify potential underperformance, and generate periodic performance reports. MPower will provide use of the Utility Usage IT Tool at no additional cost to Owner at all times during the Contract Term that MPower has free access to such Utility Usage IT Tool. Obligations of Owner with respect to the Utility Usage IT Tool are set forth in Section 8.5 (Participation in Utility Usage Tool Platform).

Section 5.2 Operations and Maintenance Services and Support

During the Contract Term, MPower may provide Owner, either directly or through designees of MPower, with certain informational services and support related to operations and maintenance of the Efficiency Measures. MPower may provide training to familiarize staff serving the Project Site with all Efficiency Measures and any associated maintenance plan, O&M manual and/or other Project-Site specific materials. MPower may provide periodic opportunities for continuing education on best practices for conservation and building operations management as well as training for all new property managers and building managers during the Contract Term.

Section 5.3 Resident Engagement and Education

During the Contract Term and as part of the Efficiency Services provided under the Contract, MPower will support Owner and Project Site staff to facilitate engagement and collaboration to empower Project Site residents to positively impact both the performance and each individual's experience using the Project Site. MPower will work with Project Site staff to design and implement various education activities and events related to the Efficiency Measures, before, during, and/or after installation of the Project Installation. MPower will support Project Site staff with best practices and building specific strategies to enhance understanding and behaviors that support optimal building performance and natural resource conservation. The Project Site staff will serve as the primary means of educating and engaging Project Site residents directly in the behavioral changes necessary to achieve maximum efficiency. MPower will provide periodic opportunities for continuing education on best practices for resident engagement as well as training for new resident services and property management staff for the Project Site during the Contract Term. MPower will develop certain materials and activities for distribution to Project Site residents, including for example, energy usage dashboards, signage, collateral material, social marketing tools and opportunities for experiential learning. MPower will solicit feedback via surveys and questionnaires to evaluate and assess the quality of the support services. MPower may also co-develop and coordinate presentations, workshops, events, competitions and celebrations with Project Site staff.

ARTICLE 6 LOCATION AND ACCESS; INFORMATION SHARING

Section 6.1 Full Access to Information

Owner agrees to provide full support to MPower and its designees for the purpose of data collection as requested during the Contract Term including by providing full and continuing authorization for MPower to receive all utility usage data directly from Owner's utility providers for the Project Site and coordinating collection and continuous access to tenant utility information, as applicable.

Owner agrees to the release and dissemination by MPower and its designees of the data collected with respect to energy and water usage at the Project Site as well as the Project Installation performed pursuant to the Construction Agreement and the Contract and other aspects of the Project. It is anticipated that information from the Project and Project Site will be used in reports within MPower and to MPower's stakeholders and service providers including without limitation, HUD, Energy Trust of Oregon, NOAH, Oregon Department of Energy, U.S. Department of Energy, and other public and private entities. Owner authorizes MPower and its designees the full use of information relative to the Project and Project Site, including ongoing efficiency results from the Project Site. Owner understands and agrees that such information may include demographic information on residents at the Project Site and the results of resident engagement programs. MPower will not disclose personal information specific to residents of the Project Site including names, unit numbers, income, ethnicity, social security numbers or date of birth without specific prior written consent. MPower shall be permitted to publish demographic information on residents at the Project Site in the aggregate but such demographic information shall not contain names or social security numbers of such residents.

MPower's right to disclose information, including, without limitation, energy and water usage information, relative to the Project Site during the Contract Term, shall survive expiration or earlier termination of the Contract.

Section 6.2 Ongoing Energy, Water, and Project Site Information.

Owner agrees to provide MPower or its designee, during the Contract Term, with the following: (a) accurate and complete ongoing information on energy and water usage (including by authorization of its energy suppliers to furnish true and correct data on energy and water usage) for the Project Site, (b) accurate and complete updated information on facility maintenance and operations at the Project Site, (c) accurate and complete updated information on occupancy and any special conditions including relevant occupant data as reasonably requested by MPower or its designee, and (d) accurate and complete updated information on utility billing and payment status and information for the Project Site.

Section 6.3 Ongoing Project Site Access

Owner agrees to give MPower and its designees access to the Project Site throughout the Contract Term, at scheduled times or otherwise with prior notice, for the purposes of collecting data and evaluating the performance and maintenance of the Efficiency Measures, evaluating resident use of the Efficiency Measures and efficacy of the Efficiency Services. MPower agrees not to unduly interfere with Owner operations during any visits to the Project Site.

Section 6.4 Publicity

Owner acknowledges and agrees that MPower and its designees may disclose information relative to the Project, other than personal information specific to residents, to the press, the public, any news-disseminating agency or any other party.

ARTICLE 7 INTENTIONALLY DELETED

ARTICLE 8 ADDITIONAL OWNER COVENANTS

Section 8.1 Agreement Not to Discontinue Utility Services

Owner agrees not to discontinue any utility services at the Project Site during the Contract Term without MPower's prior written consent, which consent shall not be unreasonable withheld, conditioned or delayed.

Section 8.2 Prior Notification to Switch Fuel Source

Owner agrees to give MPower no less than ninety (90) days prior written notice before switching any fuel source for the Project Site during the Contract Term. Owner agrees not to switch any fuel source for the Project Site which is used for operation of Efficiency Measures during the Contract Term without the prior consent of MPower, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 8.3 Participation in Utility Usage Tool Platform

Owner agrees to use the Utility Usage IT Tool provided by MPower during the Contract Term pursuant to Section 5.1 (Utility Usage IT Tool Platform) and if applicable, to support and encourage the direct use of such Utility Usage IT Tool by the residents at the Project Site. Owner agrees to take all necessary actions to populate the Utility Usage IT Tool with all necessary information promptly following Installation Acceptance. Owner agrees that it will follow all license requirements of the Utility Usage IT Tool and that Owner will not permit use of such software outside of the license terms. Owner agrees to post energy information provided by the Utility Usage IT Tool for resident information in resident common areas at the Project Site. In the event a Utility Usage IT Tool is not functioning or otherwise available for evaluation of utility usage data at the Project Site at any time during the Contract Term, Owner agrees to work with MPower to provide full access to such usage data by another means reasonably acceptable to both Parties and to post such utility usage data for resident information.

Section 8.5 Other Efficiency Contracts

Owner shall promptly provide MPower with copies of any successor or additional leases of energy or water efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site which are executed during the Contract Term.

Section 8.6 Replacement of Efficiency Measures

In the event that any of the Efficiency Measures need to be replaced by Owner during the Contract Term, Owner agrees to first notify MPower and thereafter replace such Efficiency Measures with efficiency measures with at least as high a level of energy or water efficiency potential, as applicable.

Section 8.7 Maintain Affordability

Owner agrees to continue to operate the Project Site as residential housing in which a majority of units are reserved for Low Income Households and to preserve rents at an established affordability level for a period of at least ten years from the Effective Date.

Section 8.8 Utility Allowance Schedules

Owner shall provide MPower with current utility allowance schedules applicable to the Project Site at time of adjustment or amendment and anytime upon written request.

ARTICLE 9. MATERIAL CHANGES

Section 9.1 Material Change Defined

A Material Change shall include any change in or to the Project Site, whether structural, operational or otherwise in nature which could be expected, in Owner's reasonable discretion, to increase or decrease annual energy consumption by at least 10% after adjustments for climatic variations. Actions by the Owner which may result in a Material Change include but are not limited to the following:

- (a) manner of use of the Project Site by the Owner;

- (b) hours of operation for the Project Site or for any Efficiency Measures or energy using systems operating at the Project Site;
- (c) permanent changes in the comfort and service parameters for the Project Site;
- (d) occupancy of the Project Site;
- (e) structure of the Project Site;
- (f) types and quantities of Efficiency Measures used at the Project Site;
- (g) modification, renovation or construction at the Project Site;
- (h) removal of the Efficiency Measures;
- (i) replacement, addition or removal of energy and water consuming equipment, whether plug in or fixed assets;
- (j) casualty or condemnation of the Project Site or Efficiency Measures;
- (k) changes in utility provider or utility rate classification; or
- (l) modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

Section 9.2 Reported Material Changes; Notice by Owner

The Owner shall use its best efforts to deliver to MPower a written notice describing all actual or proposed Material Changes in the Project Site or in the operations of the Project Site at least ninety (90) days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to MPower of Material Changes resulting from a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Owner within five (5) days after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Owner to have occurred.

Section 9.3 Other Adjustments

Both Parties have a vested interest in realizing the modeled efficiency at the Project Site. As such, MPower will work with Owner to investigate and identify any issues that may prevent the modeled efficiency from being realized. MPower shall not be obligated to pay for additional efficiency measures at the Project Site beyond those contained in the Efficiency Assessment and Scope, but MPower in its sole discretion may propose the implementation of additional energy or water efficiency measures at the Project Site. Owner agrees to cooperate with MPower in the analysis and consideration of additional energy efficiency measures at the Project Site.

ARTICLE 10 EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default by Owner

Each of the following events or conditions shall constitute an "Event of Default" by Owner:

- (a) any representation or warranty furnished by Owner in the Contract was false or misleading in any material respect when made;

- (b) failure to maintain the Project Site as residential housing, in which a majority of units are reserved for households with income levels no greater than 80% of median family income, inclusive of public housing;
- (c) discontinuance of utility service at the Project Site in violation of Section 8.1 (Agreement Not to Discontinue Utility Services); and
- (d) any other failure by Owner to perform or comply with the terms and conditions of the Contract in any material respect, which failure continues for twenty (20) days after notice to Owner demanding that such failure to perform be cured, or if such cure cannot be effected in twenty (20) days, Owner shall be deemed to have cured default upon the commencement of a cure within such twenty-day period and diligent subsequent completion thereof.

Section 10.2 Events of Default by MPower

Each of the following events or conditions shall constitute an "Event of Default" by MPower:

- (a) any representation or warranty furnished by MPower in the Contract is false or misleading in any material respect when made;
- (b) any failure by MPower to perform or comply with the terms and conditions of the Contract in any material respect, which failure continues for twenty (20) days after notice to MPower demanding that such failures to perform be cured, or if such cure cannot be effected in twenty (20) days, MPower shall be deemed to have cured default upon the commencement of a cure within such twenty-day period and diligent subsequent completion thereof; and
- (c) failure by MPower to pay any undisputed amount due the Contractor under the Construction Agreement, up to the aggregate Grant Amount less the MPower Coordination Fee, following notice and reasonable opportunity to cure.

Section 10.3 Remedies upon Default by Owner

If an Event of Default by Owner occurs, MPower may exercise any and all remedies at law or in equity, or institute other appropriate proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid by Owner and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees, in exercise of its remedy.

Section 10.4 Remedies Upon Default by MPower

In the Event of Default by MPower, Owner may exercise any and all remedies at law or in equity, or institute other appropriate proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid by MPower, and/or for damages which shall include all costs and expenses reasonably incurred, including attorney's fees, in exercise of its remedy.

ARTICLE 11 INSURANCE

Section 11.1 Insurance

At all times during the term of the Contract, Owner shall maintain in full force and effect, at its own expense: (a) Commercial General Liability insurance and (b) Property Liability Insurance. The limits of such insurance shall

be not less than \$1,000,000 for injury to or death of one person in a single occurrence and \$1,000,000 for injury to or death of more than one person in a single occurrence and \$1,000,000 for a single occurrence of property damage.

Section 11.2 Liabilities.

Neither Party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with the Contract. Further, the total liability of either Party under the Contract shall not exceed the total MPower Financing amount.

ARTICLE 12 WAIVER OF LIABILITIES

Section 12.1 Release of Liability and Hold Harmless

Owner agrees to release, protect, indemnify and hold harmless the Released Parties from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including without limitation, attorneys fees and expenses) imposed upon or incurred by or asserted against such Released Parties resulting from, arising out of, or relating to the performance of the Contract or participation in the Project except as such liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses arise from the gross negligence of such Released Parties. The obligations of Owner under this provision shall survive any expiration or termination of the Contract.

Section 12.2 Hazardous Substance Indemnity

MPower shall have no responsibility for the discovery, presence, handling, or disposal of or exposure of persons to hazardous materials of any kind in connection with the Project Site, including without limitation, asbestos, asbestos products, PCBs or other toxic substances. Owner agrees to indemnify MPower and save MPower forever harmless from and against any loss, cost, damage or expense, including reasonable attorneys' fees and costs, arising out of or relating to or incident to hazardous substances at the Project Site or in any way related to the Project.

Section 12.3 No Warranties on Efficiency Measures

Owner acknowledges and agrees that MPower provides no warranties on the Efficiency Measures. Owner acknowledges that MPower shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims on the Efficiency Measures. Owner is solely responsible for the maintenance and operation of all Efficiency Measures included as part of the Project and for replacement of such Efficiency Measures as necessary from time to time at Owner's sole expense.

Section 12.4 No Warranties

Owner acknowledges and agrees that neither MPower nor any of its service providers for the Project warrant any of the following: (a) any particular manufacturer or choice of Efficiency Measures, (b) the design, engineering or construction of the Project or the adequacy of the Project to meet Owner's needs at the Project Site, (c) the performance of the Efficiency Measures, (d) the accuracy of the estimated energy and water usage and cost savings included as part of the Efficiency Assessment and Scope, (e) the efficacy of the Efficiency Services, or (f) the tax and accounting treatment of the Project for the Owner including without limitation the tax and accounting treatment of the ownership of the Efficiency Measures by the Owner.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

Section 13.1 General Representations and Warranties

Each Party warrants and represents to the other that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver the Contract and perform its obligations hereunder;
- (b) its execution, delivery, and performance of the Contract have been duly authorized by, or are in accordance with, its organizational documents, and the Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (c) its execution, delivery, and performance of the Contract will not breach or violate, or constitute a default under any contract, agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected;
- (d) it has obtained all necessary consents under any contract, agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected, including in the case of the Owner as relates to capital improvements at the Project Site; and
- (e) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 13.2 Additional Representations of Owner

Owner hereby warrants and represents to MPower that:

- (a) the description of the Project Site set forth in Schedule A (Description of Project Site) is accurate in all material respects and fairly represents the condition of the Project Site and further Owner has not omitted any information regarding energy or water usage which could prevent a technically competent reviewer from effectively assessing the Project Site for appropriate efficiency measures;
- (b) it has not entered into any leases or contracts with other persons or entities regarding the provision of efficiency equipment or the provision of efficiency management services for the Project Site or with regard to servicing any of the energy related equipment located in the Project Site;
- (c) it operates the Project Site as residential housing in which a majority of residential units are reserved for Low Income Households and the Use Agreement is in full force and effect.; and
- (d) notwithstanding the availability of free weatherization upgrades through the Oregon Department of Housing and Community Services (OHCS) Weatherization Assistance Program and/or CAPO (http://www.oregon.gov/ohcs/pages/sos_low_income_weatherization_assistance_oregon.aspx), Owner desires to participate in the MPower Pilot including completion of the Project with MPower Financing.

OWNER Initials _____

ARTICLE 14 MISCELLANEOUS CONTRACT PROVISIONS

Section 14.1 Further Assurances

Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver or cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to carry out the intent and purposes of the Contract.

Section 14.2 Assignment by MPower

MPower agrees that its obligations under the Contract shall not be assigned in whole or in part to another entity without the prior written approval of the Owner, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, it is acknowledged and agreed that MPower may provide certain Efficiency Services through designees at its option.

Section 14.3 Assignment by Owner

Owner agrees that it will not sell the Project Site during the Contract Term without MPower's prior written approval and a fully signed and effective assignment and assumption agreement between Owner, the purchaser of the Project Site and MPower, in a form satisfactory to MPower in its sole discretion.

Section 14.4 Applicable Law; Disputes

The Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Oregon. For all disputes relating to the Contract, each Party consents to the jurisdiction of the courts of the State of Oregon and agrees that those courts have personal jurisdiction over each Party. Venue for disputes shall be in Multnomah County, Oregon.

Section 14.5 Amendment

The Contract may not be modified or amended except by the written agreement of the Party entitled to the benefit of the provision against whom enforcement is sought.

Section 14.6 Severability

If any provision of the Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby; provided, however, that if enforcement of the Contract in the absence of such provision would deprive a Party of a material element of its original bargain, the Parties shall promptly negotiate in good faith a reformation of the Contract to reflect as nearly as possible all material elements of the original Contract.

Section 14.7 No Waiver

No course of dealing or failure of the Owner or MPower to enforce strictly any term, right or condition of the Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of the Contract shall operate as a waiver of any other term, right or condition.

Section 14.8 Incorporation by Reference

The recitals set forth on the first few pages of the Contract, as well as all Schedules attached hereto, are hereby incorporated into the Contract by reference and expressly made a part of the Contract.

Section 14.9 Entire Agreement

The Contract represents the entire agreement between the Owner and MPower with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

Section 14.10 Rights Cumulative

Except as otherwise expressly provided in the Contract, (i) rights and remedies available to the Owner and/or MPower as set forth in the Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Owner and/or MPower in any provision of the Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

Section 14.11 Counterparts

The Contract may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To facilitate execution of the Contract, the Parties may execute and exchange electronic counterparts of the signature pages, provided originally executed signature pages are exchanged promptly thereafter.

Section 14.12 Notices

For purposes of administering the Contract and providing notices, MPower and Owner will each have a designated representative. A Party may change its representative upon providing written notice to the other Party. The Parties' representatives are as follows:

Owner Representative:

MPower Representative:

Faith Graham
Managing Director
1020 SW Taylor St., Ste. 585
Portland, OR 97205
faithg@mpoweroregon.com

Any notice provided for under the Contract shall be effective if in writing and (i) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (ii) sent by overnight or commercial air courier (such as Federal Express); or (iii) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by electronic mail, service will be deemed effective at the beginning of the next business day.

Section 14.13 Attorney's Fees

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted to enforce, interpret or rescind any provision of the Contract or in connection with any dispute hereunder, the prevailing Party will be entitled to recover such amount as the court may adjudge reasonable as attorney's fees and all other fees, costs, and expenses of litigation at trial or any appeal or review, in addition to all other amounts provided by law.

Section 14.14 Third Party Beneficiaries

Except as expressly provided in the Contract, there are no third party beneficiaries to the Contract. The terms and conditions of the Contract may only be enforced by the Parties.

Section 14.15 Headings

Headings and captions in the Contract's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify the Contract's terms or be used to interpret or assist in the construction of the Contract.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed the Contract as of the day and year first written above.

Owner

[_____]

By

MPower

MPower Oregon, LLC

By

By
