

# Seattle City Light Request for Proposal

## Update 1

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New Renewable Energy Resource Procurement

Issued 12/29/2020

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## 1. Introduction

Seattle City Light is a department of the City of Seattle and is the electric utility serving Seattle and six surrounding cities. As an enterprise, Seattle City Light owns and operates generation, transmission, and distribution facilities that deliver electricity to approximately 470,000 customers in Seattle and surrounding communities.

The power Seattle City Light delivers to its customers is primarily sourced from carbon emissions-free hydro through owned and contracted resources. Seattle City Light has been carbon neutral in its power deliveries and operations since 2005, and is proud to be a leader in municipal governments across the country for its policies and actions on carbon reduction and providing clean, reliable, affordable, environmentally responsible power to its customers. For more information on Seattle City Light, please see our most recent Integrated Resource Plan (IRP) found in the following link: <http://www.seattle.gov/light/IRP/default.asp>.

### 1.1 Scope and Purpose

Recent actions by utilities, customers, and policy makers across the country are creating a greater need to develop more renewable energy resources. Seattle City Light is developing a program to offer 100% renewable energy that is bundled with its renewable energy certificates (RECs), delivered to our service territory, and sourced from newly built solar, wind or a combination of technologies.

Seattle City Light is seeking a total between 50 and 250 MWs nameplate capacity of new renewable resources including solar, wind, or combination of the two resource types, with or without battery storage. These new resources should be developed and operated in Washington state or in the Pacific Northwest.

Seattle City Light will consider proposals for power purchase agreements (PPA) as well as a range of ownership structures, including PPAs with purchase options or obligations, sales of existing assets, acquisition of project development assets and rights, joint ownership, and build-own-transfer agreements.

Seattle City Light will evaluate and select resources based on our assessment of the needs of our customers. Seattle City Light may or may not acquire any resources from this process.

## 2. Estimated Timing and Schedule

Milestone	Date
RFP Issue Date	December 29, 2020
Deadline for Questions	January 21, 2021
Answers to Questions	February 5, 2021
Notice of Intent to respond due to Seattle City Light	February 15, 2021 By 5 p.m. Pacific Standard Time
Deadline to submit proposals	March 1, 2021 By 3 p.m. Pacific Standard Time
Internal evaluation and Q&A with bidders	March 2, 2021 – March 31, 2021
Notification of Shortlist Selection	March 31, 2021
Clarification Q&A <a href="#">for Short-listed entities</a>	April 21, 2021
Notification of Selected Bid(s)	May 17, 2021
Contract Negotiations	May 17, 2021 -September 2021
Contract Execution (Transmission <a href="#">process and possible service request</a> Concurrent)	October 1, 2021
Project Operational Date	January 1, 2023-December 31, 2025

Dates are subject to change. City Light will notify respondents of any changes.

### 3. Requirements

To be considered for evaluation, all proposals must meet the minimum requirements specified in section 3.1.

**3.1 Minimum Requirements** - Respondents should be prepared to hold all commercial terms for 180 days after submittal.

**3.1.1 Minimum Bid Quantity** - The minimum bid amount is 50 MW.

**3.1.2 Minimum/Maximum Bid Term** - The minimum bid term is ten (10) years. The maximum bid term is fifty (50) years. Seattle City Light will consider ownership/build-to-buy options.

**3.1.3 Price** - Please provide pricing for the bid. If bidder is offering or considering different terms and/or on-line dates, please indicate pricing as appropriate.

**3.1.4 Transmission Service Status** - Bidders must provide a statement describing how they will consider transmission as a part of their proposal.

**3.1.5 Qualifying Product Bids** - Bidders must agree to sell to Seattle City Light all output from or title to an identified renewable resource. Products include energy, capacity, resource adequacy, and environmental attributes, and are further described in the Power Purchase Agreement (PPA), which will be sent to those developers who provide a Notice of Intent. Respondents should familiarize themselves with the PPA and be able to meet all terms and provisions in the PPA. Seattle City Light will consider being a co-buyer of the output from a project, for example buying the output from a 100 MW portion of a 300 MW project, however, Seattle City Light will obtain all energy, capacity, resource adequacy, environmental attributes, and other properties as described in the PPA from the contracted portion of the project.

The successful bidder(s) will convey to Seattle City Light all Environmental Attributes tracked as Renewable Energy Certificates and transferred through the Western Renewable Energy Generation Information System (WREGIS).

Seattle City Light is considering Green-e certification for the program but has not made a final decision. The developer will work with Seattle City Light to ensure the project(s) is/are eligible for Green-e's certification if Seattle City Light decides to require Green-e certification.

**3.1.6 Credit and Bidder Qualifications** - Seattle City Light's Risk Management credit requirements provide Seattle City Light reasonable assurance that Seattle City Light will be able to readily recover its actual damages in the event of default by the Bidder. Final collateral requirements will be determined prior to execution of an agreement.

To be eligible for consideration, a Bidder must demonstrate investment grade ratings by Standard and Poors ('S&P') and/or Moody's Investor Services, Inc. ('Moody's) of 'BBB' and/or 'Baa2' or higher, respectively; along with audited financial statements from the most recent two years. If the Bidder does not have the above investment ratings and audited financial statements, then the Bidder must demonstrate the parent, if applicable, has above investment ratings and audited financial statements for issuance of an acceptable parent guarantee. Throughout the term of this

agreement, Seattle City Light requires annual audited financial statements of the Bidder or parent as applicable.

If both Bidder and parent do not have the above such investment grade ratings, Bidder must demonstrate an ability to secure necessary performance assurance in the form of an acceptable letter of credit ('LOC') from an acceptable bank issuer - with investment grade ratings by S&P and/or Moody's of 'A+' and/or 'Aaa1' or higher, respectively.

If the Bidder or parent's investment ratings become S&P 'BBB-' and/or Moody's 'Baa3' or become S&P and/or Moody's non-investment grade at any point during the contract period, an acceptable LOC may be required from an acceptable bank issuer with investment grade ratings of S&P 'A+' and/or 'Aaa1' within 10 business days of Seattle City Light's request for assurance. If the bank issuer's investment rating falls below S&P's 'A-' and/or Moody's 'Aaa1' during the term of the agreement, a new acceptable LOC is required from an acceptable bank issuer with an investment grade ratings of S&P 'A+' and/or Moody's 'Aaa1'.

- 3.1.7 Other Bidder Pre-qualification** - As applicable, the Bidder must provide documentation, satisfactory to Seattle City Light, that it is authorized under the law to sell power, and able to schedule power and operate under industry standards established by the Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council (WECC), and the North American Energy Reliability Council (NERC), or other applicable regulatory body or government agency.
- 3.1.8 Renewable Development** - Please provide a statement explaining how your project is above and beyond business as usual, how investment in this project will lead to the development of new renewables, or leads to development of renewable supply that exceeds regulatory requirements.
- 3.1.9 Narrative of Related Project Experience** - Please provide a statement describing your experience delivering projects of similar scope within the past 10 years. Include a customer contact for reference, project description, location, and delivery methods. Seattle City Light is most interested in brief narratives of the execution approaches, means and methods, and execution strategies directly performed by the contractor and its project personnel on related projects. Seattle City Light is also interested in specific challenges the team encountered on related projects and how these challenges were addressed/overcome.
- 3.1.10 Management Approach** - Please provide information on how you plan to manage the project from planning through execution and operations and maintenance.
- 3.1.11 Workforce Development Plan** - Please provide a one-page plan on how you will aim to support job creation in communities related to the project. Are there economically disenfranchised communities near the project site? Provide information about the number of apprentices and women and minority business enterprises the project will or may employ during design, construction, and operation. If available, please provide the same information regarding where the generation and controls equipment is manufactured, and where the project is designed. Please describe at least one example from previous projects/developments.
- 3.1.12 Design and Technical Execution** - Proposals must incorporate the requirements of section 3 of this RFP as well as an estimated schedule, intended location of renewables, and approaches to minimize risk to the environment and ensure social equity. Proposals should also describe the design approach to include intended equipment/material selection and specification sheet.
- 3.1.13 Capacity Maintenance Agreement** - Please provide a draft capacity maintenance agreement. Please also provide information on intended equipment warranties.

## 3.2 General

The following general requirements apply to all bids to be evaluated in this RFP.

**3.2.1 Notice of Intent to Bid** - Bidders must send Attachment A of this RFP the Notice of Intent to bid to [SCL\\_renewable\\_RFP@seattle.gov](mailto:SCL_renewable_RFP@seattle.gov) . This should be received by 3 p.m. Pacific Standard Time, February 15, 2021.

**3.2.2 Resource delivery** - Seattle City Light will consider resources that have secured transmission on the Bonneville Power Administration (BPA) or other transmission provider to Seattle City Light's Balancing Authority Area (BAA). Seattle City Light will also consider resources with transmission to Mid-Columbia. Seattle City Light will consider resources without transmission. Please provide information on resource delivery as defined in sections 3.2.2.2, 3.2.2.3, or 3.2.2.4 as applicable.

**3.2.2.1 Resource Delivery** - For those resources located outside Seattle City Light's Balancing Authority Area, resource output must eventually be delivered to Seattle City Light's BAA given that Seattle wants firm delivery to the Seattle BAA. Seattle City Light understands that firm transmission may not be available initially, and that over the lifetime of the project a firm delivery initially at Mid-Columbia may migrate to a Seattle delivery over time. Seattle City Light also understands that some parties may have firm transmission to other points in the Puget Sound area or may be part of a cluster study for BPA transmission projects. Please include all information relative to the delivery as further discussed below.

**3.2.2.2 With firm BPA or other transmission to Seattle City Light** - (50 – 250 MW) of new resources, solar or wind project(s). Provide transmission service request, status, amount, start and stop dates, Point of Delivery (POD) and Point of Receipt (POR). Seattle City Light's POD is identified as BPAT.SCL. Please respond with the answers to the following questions:

- Will the bidder manage the Balancing Authority Area Service Agreement (BAASA)?
- Will the bidder prefer to work with BPA and Seattle City Light to pseudo-tie the resource to Seattle City Light's BAA?

**3.2.2.3 With firm transmission to Mid-Columbia market** - New resource, delivered to Mid-Columbia, until such time the Parties obtain firm transmission to Seattle City Light's BAA. Provide transmission service request, status, amount, start and stop dates, POD and POR. Please respond with the answer to the following questions:

- Will the bidder manage the BAASA?
- Will the bidder prefer to work with BPA and Seattle City Light to pseudo-tie the resource to Seattle City Light's BAA?

**3.2.2.4 With no transmission**, wind, solar or storage projects, as proposed. Provide status of seeking BAASA. Provide plan of service.

**3.2.3 Resource on-line date** - Seattle City Light wants newly built resources on-line after January 1, 2023 and on or before December 31, 2025.

**3.2.4 Resource Availability** - Bidders should include evidence substantiating the Bid's forecasted energy deliveries. Bidders should provide monthly minimum, maximum, and median output.

Bidders selected for the short-list must provide upon request at least three years of forecasted facility level generation consistent with a contemporaneous period of historical wind or irradiance



observations. Short listed bidders must also provide average expected generation for each month-hour (presented in a 12x24 table). The historical and average energy output estimates must be produced by a qualified independent third-party or consistent with an included energy assessment.

### 3.3 Site Characteristics

- 3.3.1 Site Control** - Bidders must support the Bid by demonstrating dependable site control including anything necessary for interconnection. At the time of bid submission, Bidders must show what they possess related to title to the site, have executed a lease agreement, or executed an option agreement applicable to a minimum of 80% of the project site. Prior to placement on Seattle City Light's final shortlist, Bidders will be required to provide a plan to demonstrate site control for 100% of the project site for the term of the proposed PPA or project ownership.
- 3.3.2 Permitting** - Bidders must prepare and provide a detailed plan that lists all required site-specific permits and provide a plan and schedule for obtaining all permits and licenses. If at any point it is determined that a project cannot obtain the required permits as designed, Seattle City Light reserves the right to reject the Bid.
- 3.3.3 Technology Proposals** - Seattle City Light will only consider Bids that use widely deployed generating technologies. Seattle City Light will not accept generation technology shown to have serial defects. Serial defects are considered to be a design or manufacturing problem that has affected 10% or more of the installed models. Generation technology must comply with all current applicable Codes and Standards for a USA-based resource. Bidders may contact Seattle City Light if they are uncertain whether their choice of specific generation technology is acceptable to Seattle City Light. (Requests need to be received by Seattle City Light no later than January 21, 2021.) Seattle will review any such information as to their suitability for meeting our renewable energy requirements as described in this RFP. Seattle City Light will respond to such requests within two weeks of receipt.
- 3.3.4 Financing** - As applicable, Bidders must provide a reasonable plan to obtain project financing. Those Bidders who are unable to internally or balance sheet finance the proposed project (supported by appropriate financial statements) must provide evidence of a good faith commitment from a financial institution or lender prior to placement on Seattle City Light's final shortlist.
- 3.3.5 Equipment and Construction Costs** - To be eligible to bid, Bidders must include a quote, commitment, or documentation of purchase from a wind turbine or photovoltaic panel. For utility-ownership projects, bids must also include Engineer Procure and Construct quotes to design and build the facility. For utility-ownership projects the bid price estimate must be consistent with the equipment supplier and EPC contractor (or Build/Operate/Transfer agreement) documentation.
- 3.3.6 Tax Credit Eligibility** - Offers that intend to utilize federal tax credits will need to demonstrate the project's eligibility for the specified credit. Seattle City Light requires a narrative and plan describing the timeline to achieve the associated federal tax benefit.
- 3.3.7 Interconnection** - All Bidders must provide the status of their executed System Impact Study Agreement.

### **3.4 System Operations**

- 3.4.1** The NERC BAL-003 standard phase II revision will require Generation Owner/Generation Operator (GO/GOP) level compliances in addition to the BAA level compliance.
- 3.4.2** The requirement of (daily) Operation Planning Analysis (OPA) to evaluate individual generation unit available Frequency Response Reserves.
- 3.4.3** The new renewable resources shall demonstrate the ability to provide sufficient Frequency Response reserve.
- 3.4.4** No payment is due Seller for any curtailment made at the generation project or on the transmission to the POD.

Seattle City Light Operations reserves the right to curtail/interrupt/reduce/suspend the unit to partial or full output to support planned maintenance work.

Buyer shall be responsible for compensation to the Seller for energy lost during curtailments on Buyer's system.

### **4. Limitations**

It is the sole opinion of Seattle City Light to determine if the Proposer is considered responsive. If Seattle City Light determines a Proposer to be not responsive, Seattle City Light will provide, by email or other writing, the reasons for the determination.

#### **4.1 Irregular Proposals**

- a. Seattle City Light has the right to review Proposals for material irregularities. If Seattle City Light determines a Proposal to be irregular and rejects it, notification will be sent to the Proposer in writing containing the reason for the determination.
- b. Proposal will be considered irregular and non-responsive if:
  - i. The Proposal does not constitute a definite and unqualified offer to meet the material terms of the RFP.
  - ii. The Bid Guaranty is not complete or not sufficient.
  - iii. The entries in the required Proposal submittal documents are not typewritten or entered legibly in ink; or
  - iv. The Proposal is not properly executed.
  - v. An unsatisfactory performance record exists as shown by past or current Work for Seattle City Light, or for others, as judged from the standpoint of the conduct of the Work, environmental or safety compliance records, workmanship, progress, social equity, Community Workforce Agreement, or equal employment opportunity practices; or termination for cause;

- vi. The Proposer has failed to settle bills for labor or materials on past or current contracts.
- vii. The Proposer has been convicted of a crime arising from a previous public contract.
- viii. For any other reason deemed proper by Seattle City Light.
- ix. Seattle City Light will notify the Proposer by email or by other writing if the Proposer is determined to be not responsive under this Section.

## **4.2 Modifications and Final Approval**

SEATTLE CITY LIGHT RESERVES THE RIGHT TO CANCEL OR MODIFY THE RFP, THE RFP SCHEDULE, AND THE RFP PROCESS AS IT DEEMS NECESSARY OR TO COMPLY WITH REGULATORY ORDERS, RULES, REGULATIONS OR GUIDELINES WITHOUT LIABILITY OR OBLIGATION TO ANY BIDDER. SEATTLE CITY LIGHT RETAINS SOLE DISCRETION TO DETERMINE WHICH PROPOSAL(S) WILL BE SELECTED FOR FURTHER REVIEW AND NEGOTIATION. ASPECTS OF BIDDER'S PROPOSAL MAY BE SUBJECT TO FURTHER INQUIRY TO SPECIFICALLY DEFINE THE OPERATION OF THE PROJECT, TO ENSURE ADEQUATE FINANCIAL AND CREDIT SUPPORT FOR BIDDER, TO ENSURE THAT THE PROJECT IS CONSISTENT WITH SEATTLE CITY LIGHT'S REQUIREMENTS OR FOR ANY OTHER REASON. FURTHER INQUIRY SHALL NOT IMPLY THAT A PROPOSAL WILL BE SELECTED. THERE SHALL BE NO BINDING CONTRACT UNTIL SEATTLE CITY LIGHT AND BIDDER HAVE EXECUTED A FINAL DEFINITIVE AGREEMENT AND ANY APPLICABLE REGULATORY REVIEW HAS BEEN COMPLETED. IN ITS SOLE DISCRETION AND AT ANY TIME, SEATTLE CITY LIGHT MAY SUBMIT ANY FINAL DEFINITIVE AGREEMENT TO THE SEATTLE CITY COUNCIL FOR FINAL REVIEW BEFORE SUCH AGREEMENTS ARE ENFORCEABLE BY BIDDER.

## **5. Power Purchase Agreement (PPA)**

Draft PPA to be delivered to all Entities that provide a Notice of Intent. Respondents may provide a PPA that Seattle City Light will consider.

## **6. Evaluation Criteria**

Seattle City Light will consider all information provided about the projects and has provided both open-ended and specific questions so that respondents can cast their projects in the best possible way.

Seattle City Light's subject matter experts will consider project developer's experience in the field, approach to this project, and goals for delivering all aspects of the project in a first-class manner. Seattle City Light will consider the value the project provides to our customers, to the people in the vicinity of the project, and the areas where the project or components will be designed, manufactured, and built. Timing, delivery, and price are important considerations. How the developer will ensure that all project values are met over the entire span of the PPA or ownership are also important to a lasting and valued business relationship.

## 7. Credit / Insurance

### Insurance Requirements

- 7.1 Builders Risk** (Course of Construction) - "All Risk" (Special Perils) coverage form, with limits equal to the completed value (including both hard cost and soft cost) of the project and no coinsurance penalty provisions.
- 7.2 Property Insurance** - "All Risk" (Special Perils) coverage form at full replacement cost with no coinsurance penalty provision for repair or replacement of the facility. The policy shall include Boiler and Machinery, Earthquake, and Wind/Hail coverage. The deductible(s) shall not exceed the Seller's financial ability to fund the costs of losses and shall not be greater than prevailing practices for similar operations in the state in which the Facility is located.
- 7.3 Commercial General Liability** - Insurance coverage, on an occurrence basis, with a limit of \$2,000,000 per occurrence. The coverage must include: (i) Bodily Injury and Property Damage Liability, (ii) Contractual Liability, including coverage for the indemnity obligations under this Agreement and (iii) Products and Completed Operations Liability. Policy shall be endorsed to name The City of Seattle doing business as Seattle City Light, its officials, agents, and employees as an Additional Insured for full coverage and policy limits. Additional Insured status shall include products-completed operations coverage. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the state in which the Facility is located.
- 7.4 Business Automobile Liability** - Insurance coverage with a minimum single limit of \$2,000,000 per claim for bodily injury and property damage with respect to project operator's use of vehicles whether owned, hired or non-owned, assigned to, or used in the performance of the Work. Policy shall be endorsed to name Seattle City Light, its officials, agents, and employees as additional insured for full coverage and policy limits.
- 7.5 Excess general liability policy** - Minimum limit of \$25 million. Policy shall be endorsed to name Seattle City Light, its officials, agents, and employees as additional insured for full coverage and policy limits.
- 7.6 Pollution liability** - Minimum limit of \$5 million. Policy shall be endorsed to name Seattle City Light, its officials, agents, and employees as additional insured for full coverage and policy limits.
- 7.7 Cyber Insurance** - Minimum limit of \$5 million to cover 1<sup>st</sup> party damage related to a cyber related loss.
- 7.8 Workers' Compensation** - Workers Compensation/Employer's Liability: Insurance coverage with respect to all persons performing the Work, in accordance with the applicable laws of the state in which the Work is to be performed. All required insurance policies that name Seattle City Light, its officials, agents, and employees as additional insured for full coverage and policy limits as an additional insured must include provisions that such insurance is primary insurance with respect to the interests of Seattle City Light and that any other insurance maintained by Seattle is excess and not contributory insurance with the required insurance. Owner/Operator shall notify Seattle City Light within 30 days of any cancellation or change in limits of liability of any required insurance policy. Owner/Operator shall ensure that any policy of insurance that operator or any subcontractor carries as insurance against property damage or against liability for property

damage or bodily injury (including death) shall include a provision providing a waiver of the insurer's right to subrogation against Seattle City Light, its officials, agents, and employees as the additional insured. To the extent permitted by the policies of insurance, Owner/Operator hereby waives all rights of subrogation against Seattle City Light, its officials, agents, and employees.

## **8. Confidentiality**

If a bidding or submitting entity believes certain portions or all of their responsive materials to this RFP are confidential, said entity is required to sign a non-disclosure agreement substantially in the form of attachment (C) and must take steps outlined in attachment (C) to clearly demark what is considered confidential. Additionally, a bidding or submitting entity must be fully aware of the disclosure obligations Seattle City Light adheres to in relation to Chapter 42.56 of the Revised Code of Washington, Public Records Act as described in section 6 of the attached non-disclosure agreement.

**Attachment A**

**Notice of Intent to Bid**

Response to Seattle City Light Solar/Wind Energy Request for Proposal  
Notice of Intent to Respond

Seattle City Light Solar/Wind RFP 2021

This form must be completed as part of the Pre-Bid Information and submitted to  
SCL\_renewable\_RFP@seattle.gov.

Deadline - 3:00PM (PST), February 15, 2021.

A. Notice of Intent to Respond to Seattle City Light Solar/Wind RFP

by:\_\_\_\_\_

Transacting Entity:\_\_\_\_\_

Mailing Address:\_\_\_\_\_

City State Zip \_\_\_\_\_

Phone Number:(\_\_\_\_\_)\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Signature:\_\_\_\_\_ Date:\_\_\_\_\_ Signed

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

## **Attachment B**

### **Build Transfer vs PPA**

#### CONTRACT FORM AND TERM/PRICE/OWNERSHIP STRUCTURES

Form and Term: Seattle City Light will accept proposals for Power Purchase Agreements ("PPA") or other structures as outlined in this RFP. Pursuant to the terms of a PPA, Seattle City Light will obtain all rights to the output of the Project, including the energy (net of facility service power and losses), capacity, and all Environmental Attributes generated by the Project for a minimum 10-year term and maximum 50-year term.

Price: Seattle City Light seeks competitive Proposals for the sale of Project output (including energy, capacity, and other attributes including Environmental Attributes) to Seattle City Light at the maximum value to customers.

Alternative Ownership Structures: Seattle City Light will consider options to purchase/own the Project outright during the term of the PPA or as an element of the proposal set forth by respondents to this RFP. In addition to a PPA structure, bidders may propose ownership structures, which may include a turn-key Project to be owned by Seattle City Light, joint development and co-ownership, or another mutually beneficial arrangement. For PPA-only Proposals Seattle City Light shall have a right of first refusal to purchase the Project.

## Attachment C

### Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement ("Agreement") is made and entered into as of <date>, between The City of Seattle ("Receiving Party" or "City Light") and \_\_\_\_\_ ("Disclosing Party"). Disclosing Party and Receiving Party agree as follows:

#### 1. Definitions

"Confidential Information" shall mean: (i) information disclosed in tangible form by Disclosing Party and marked "confidential" or "proprietary;" or (ii) oral information designated as Confidential Information by the Disclosing Party at the time the oral information is provided.

#### 2. Purpose

The Receiving Party shall use the Confidential Information only for the following purposes:

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#### 3. Obligation of Confidentiality

The Receiving Party shall limit the use of and access to Disclosing Party's Confidential Information to the Receiving Party's employees or independent contractors who need to know such Confidential Information, for the purpose set forth in Section 2 above. However, before the Receiving Party may disclose Confidential Information to any independent contractors/ subcontractors (Contractors), the Contractors must also sign and submit a similar Non-Disclosure Agreement to receive access to any of the Disclosing Party's Confidential Information. Neither Party nor its Representatives shall be liable to the other Party or its Representatives for any special, indirect, non-compensatory, consequential, incidental, punitive, or exemplary damages of any type, including lost or prospective profits, loss of business opportunity, or business interruptions, whether arising in contract or tort (including negligence, whether sole, joint or concurrent, or strict liability, but excluding gross negligence or willful misconduct), or otherwise, arising under this Agreement.

#### 4. Confidentiality Period

The Receiving Party's obligations to protect Confidential Information hereunder continue as for a period of one (1) year.

#### 5. Exceptions

The Receiving Party has no obligation of confidentiality to any Confidential Information that:

- a. is or becomes a matter of public knowledge through no fault of the Receiving Party; or
- b. was in the Receiving Party's possession or known by it prior to receipt from the Disclosing Party; or
- c. was rightfully disclosed to the Receiving Party by a third party without restriction; or
- d. is independently developed by the Receiving Party without access to Disclosing Party's Confidential Information.

The Receiving Party may disclose Confidential Information pursuant to any statutory or regulatory requirement or court order, provided that Disclosing Party is, to the extent legally permitted, given ten (10) days advance notice of any proposed disclosure, in order for Disclosing Party to pursue a protective order. If a protective order is not



obtained by Disclosing Party at the conclusion of this ten (10) day period, the Receiving Party may disclose the requested Confidential Information without further liability.

**6. Washington Public Records Act** Disclosing Party understands that, unless exempt under applicable law, Confidential Information that it submits under this Agreement may be subject to public inspection or copying under the Chapter 42.56 of the Revised Code of Washington, Public Records Act (“PRA”). If any requests for disclosure of Confidential Information are made pursuant to the PRA, prior to releasing any Confidential Information, Receiving Party will determine whether the material should be made available under the law. If Receiving Party determines that the material is not exempt and may be disclosed, Receiving Party will notify the Disclosing Party of the request and allow the Disclosing Party 10 working days to take appropriate action pursuant to RCW 42.56.540. If the Disclosing Party fails or neglects to take such action within said period, Receiving Party may release the portions of the Confidential Information deemed subject to disclosure, and Disclosing Party shall be deemed to have consented to the disclosure of the Confidential Information and waived and released any and all rights, remedies, claims and causes of action Disclosing Party has or may have had against Receiving Party, and any and all of its directors, officers, employees, agents, representatives and insurers, arising from or relating to Receiving Party’s disclosure of the Confidential Information pursuant to this Section 6.

#### **7. Equitable Relief**

The Receiving Party acknowledges and agrees that due to the unique nature of Disclosing Party’s Confidential Information, there may be no adequate remedy at law for any breach of its obligation. Receiving Party further acknowledges that any such breach may allow the Receiving Party or third parties to use such Confidential Information to irreparably harm the Disclosing Party and therefore, upon any such breach or threat thereof, Disclosing Party shall be entitled to seek appropriate equitable relief. The Receiving Party will notify Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach.

#### **8. Intellectual Property Rights**

Receiving Party does not acquire any intellectual property rights under this Agreement or through any disclosure hereunder, except the limited right to use such Confidential Information in accordance with this Agreement.

#### **9. Return of Information**

At any time, the Disclosing Party may request the return or the destruction of all Confidential Information previously provided to the Receiving Party. Upon receipt of such request, all such Confidential Information, including without limitation any copies, summaries or compilations of such information, still in the Receiving Party’s possession or under its control shall be promptly returned or destroyed, as requested except, however, Receiving Party may retain any Confidential Information as required by law, as determined by Receiving Party in its sole discretion.

#### **10. General**

This Agreement supersedes all prior discussions and writing with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of each party and no failure or delay in enforcing any right will be deemed a waiver of such right. The parties understand that nothing herein requires either party to proceed with any proposed transaction or relationship in connection with which the Confidential Information may be disclosed. In the event that any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Washington without regard to conflicts of laws provisions thereof, and each party submits to the jurisdiction and venue of the Washington state or federal court serving the King County area with respect to the subject matter of this Agreement. The headings to the Sections of this Agreement are included merely for reference and shall not affect the meaning of the language included therein. This Agreement is written in the English language only, which language shall be controlling in all respects. If applicable, this Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

WHEREFORE, the Parties acknowledge that they have read and understood this Agreement and voluntarily accept the duties and obligations set forth herein.

The City of Seattle

Company Name

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

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

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

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

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

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

Address: 700 Fifth Avenue, Suite 3200

Address: \_\_\_\_\_

PO Box 34023

\_\_\_\_\_

Seattle, WA 98124-4023

Phone/ Email: \_\_\_\_\_

## PROPOSAL SUBMITTAL CHECKLIST

- Minimum Requirements as described in Section 3.1
- General Requirements as described in Section 3.2
- Site Characteristics as described in Section 3.3
- System Operations as described in Section 3.4
- Optional power purchase agreement as described in Section 5
- Ability to meet Credit and Insurance requirements as described in Section 7
- Attachment A - Notice of Intent to Bid
- Attachment B - Build Transfer Option
- Attachment C - Non-Disclosure Agreement if required by bidder

Note: This checklist is provided to assist your submittal process but shall not replace your review and verification of the RFP requirements.