

CITY COUNCIL AGENDA REQUEST FORM

Today's date: 4 / 10 / 19

Date of meeting 4 / 17 / 19

(City Council meetings are held the 1st and 3rd Wednesday of each month.)

Name of Citizen, Organization, Elected Official, or Department Head making request:

Jennifer Stapleton - City Administrator

Address: 1123 Lake Street Sandpoint, ID 83864

Phone number and email address: 208-263-3557 slynds@sandpointidaho.gov

Authorized by: Jennifer Stapleton

name of City official

City official's signature

(Department Heads, City Council members, and the Mayor are City officials.)

Subject: Big Belly Solar, Inc. Service Agreement

Summary of what is being requested: To formally approve and authorize the Mayor to sign a 60 month agreement with Big Belly Solar, Inc. for equipment (delivery, installation & warranty), software, customer service, equipment maintenance, training and other.

The following information MUST be completed before submitting your request to the City Clerk:

1. Would there be any financial impact to the city? **Yes or No**

If yes, in what way? _____

2. Name(s) of any individual(s) or group(s) that will be directly affected by this action:

Have they been contacted? **Yes or No**

3. Is there a need for a general public information or public involvement plan? **Yes or No**

If yes, please specify and suggest a method to accomplish the plan:

4. Is an enforcement plan needed? **Yes or No** Additional funds needed? **Yes or No**

5. Have all the affected departments been informed about this agenda item? **Yes or No**

This form must be submitted no later than 6 working days prior to the scheduled meeting. All pertinent paperwork to be distributed to City Council must be attached.

ITEMS WILL NOT BE AGENDIZED WITHOUT THIS FORM

**CITY OF SANDPOINT
AGENDA REPORT**

DATE: April 17, 2019

TO: MAYOR AND CITY COUNCIL

FROM: Jennifer Stapleton, City Administrator

SUBJECT: Big Belly Solar, Inc. Service Agreement

DESCRIPTION/BACKGROUND:

Big Belly Solar, Inc. provides smart waste and recycling solutions for public spaces, allowing communities to deploy solar-powered, sensor equipped waste and recycling stations that communicate their real time status, notifying crews when they are ready to be collected and helping to streamline waste operations, increase productivity and keeping public areas clean. The Bigbelly HC5 model station is a proven waste compactor that works in any location, delivering 150 gallons of capacity, which is up to 10 times the traditional waste bin. In addition to modernizing a core city services can be used to host additional technologies in plain sight, such as Small Cell and Wi-Fi.

The Service Agreement will include the software, equipment, equipment delivery, installation, customer service and equipment maintenance, warranty for the defective part replacement and repair, set up and training and any other features, products or services provided as part of and included under the terms of this agreement.

The Service Agreement is a fixed-term 60-month agreement of \$5,779.55 and will be funded from the Sanitation Fund.

STAFF RECOMMENDATION:

To approve the Service Agreement with Big Belly Solar, Inc.

ACTION:

Council approval and authorization for the Mayor to sign the Service Agreement with Big Belly Solar, Inc.

WILL THERE BE ANY FINANCIAL IMPACT? Yes HAS THIS ITEM BEEN BUDGETED? Yes

ATTACHMENTS:

Service Agreement between the City of Sandpoint and Big Belly Solar, Inc.

No: 19-
Date: April 17, 2019

RESOLUTION
OF THE CITY COUNCIL
CITY OF SANDPOINT

TITLE: CONNECT SERVICES AGREEMENT WITH BIGBELLY, INC.

WHEREAS: Bigbelly, Inc., provides smart waste and recycling solutions for public spaces, allowing communities to deploy solar-powered, sensor-equipped waste and recycling stations that communicate their real-time status, notifying crews when they are ready to be collected and helping to streamline waste operations, increase productivity, and keep public areas clean;

WHEREAS: Bigbelly is a platform deployed in the public right-of-way that, in addition to modernizing a core city service, can be used to host additional technologies in plain sight, such as Small Cell and Wi-Fi;

WHEREAS: Bigbelly's HC5 model station is a proven, solar-powered waste compactor that works in any location, delivering 150 gallons of capacity, which is up to ten times a traditional waste bin; and

WHEREAS: Within the current fiscal year, the City is able to enter into a fixed-term initial 60-month agreement for these services, funded on a monthly basis under the Sanitation Collection Services budget.

NOW, THEREFORE, BE IT RESOLVED THAT: The Connect Services Agreement with Bigbelly, Inc., a copy of which is attached hereto and made a part hereof as if fully incorporated herein, is hereby approved, and the Mayor is authorized to sign and enter into this agreement on behalf of the City.

Shelby Rognstad, Mayor

ATTEST:

Melissa Ward, City Clerk










YES NO ABSTAIN ABSENT

1. Eddy
2. Aitken
3. Williamson
4. Ruehle
5. Aispuro
6. Darling

Agreement No. _____

CUSTOMER	Full Legal Name: City of Sandpoint		Legal Contact:	
	Billing Address:		Billing Contact:	
			Billing Phone:	
			Billing Email:	
	Sales Tax Status:	<input type="checkbox"/> Exempt (Attach Certificate)	TIN or FEIN:	
		<input type="checkbox"/> Non-Exempt		
	Insurance:	<input type="checkbox"/> Self-Insured		
		<input type="checkbox"/> Insurance Certificate Attached		
Shipping Address:		Shipping Contact:		
		Shipping Phone:		
		Shipping Email:		

Connect Service Schedule

<div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  System Software <ul style="list-style-type: none"> CLEAN Management Console Licenses for Full Term CLEAN Mobile Software Licenses for Full Term </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Equipment/Hardware <ul style="list-style-type: none"> Custom Configuration as Detailed Below </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Station Installation <ul style="list-style-type: none"> On-Site Installation for Stations </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Setup and Training <ul style="list-style-type: none"> CLEAN Management Console Software Account Setup System Training & Onboarding </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Equipment/Hardware Configuration <ul style="list-style-type: none"> 24 HC5 Single Stations with Foot Pedals 19 HC5 Single Stations with Foot Pedals and Ash Trays 13 SC5.5 Single Stations with SC Hoppers and Foot Pedals </div>	<div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Automated System Monitoring <ul style="list-style-type: none"> Automated System Diagnostics and Alerts </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Cleaning and Inspection <ul style="list-style-type: none"> Annual Comprehensive Station Cleaning Annual 21-Point Station Inspection </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Warranty <ul style="list-style-type: none"> Hardware Parts Warranty for Full Term (includes battery) </div> <div style="background-color: #f2f2f2; padding: 5px; margin-bottom: 5px;">  Customer Support <ul style="list-style-type: none"> Customer Support Hotline and Trained Field Service Professionals </div>
Service Fee: Total Monthly System Cost	\$5,779.55
Shipping: One Time Fee	\$8,070.00
20 Boxes of HC Bags (Box of 50)	\$670.00
6 Boxes of SC Bags (Box of 100)	\$294.00

This Service Agreement (the "Agreement"), made and entered into as of _____ (the "Effective Date"), by and between the Customer identified above ("Customer") and Big Belly Solar, Inc. ("Bigbelly") a Delaware corporation located at 150 A Street, Suite 103, Needham, MA 02494, and incorporates herein by reference the attached Terms and Conditions. Bigbelly and

Customer shall each be referred to herein as a "Party" and collectively as the "Parties". The initial term of this agreement shall be 60 Months (the "Initial Term"). The payment terms of this Agreement are monthly in arrears ("Payment Terms"). This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one instrument. Intending to be legally bound, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth above.

CUSTOMER:

By: _____

Printed Name: _____

Title: _____

Date: _____

BIG BELLY SOLAR, INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT A
CONNECT SERVICE TERMS AND CONDITIONS

For purposes of this Attachment A, the 'Agreement' shall mean the Connect Service Agreement signed by the parties. The meaning of capitalized and undefined terms appearing in these Terms and Conditions shall be as set forth in the Agreement unless otherwise indicated herein.

1.0 Definitions

- 1.1 Service. The term "Service" means Connect by Bigbelly, including software, equipment, equipment delivery, installation, customer service and equipment maintenance, warranty for defective part replacement and repair, set up and training and any other features, products or services provided as part of and included under the terms of this Agreement.
- 1.2 Equipment. The term "Equipment" means station hardware and accessories provided by Bigbelly to Customer for use with the Service.
- 1.3 Software. The term "Software" refers to CLEAN cloud-based software for use with mobile or desktop devices intended for use by Customer with the Service.

2.0 Term of Agreement

- 2.1 Term. The Term of this Agreement will commence on the date that all Equipment ordered pursuant to this Agreement has been delivered to the Customer and received at Customer's receiving location. Upon expiration of the Term, this Agreement will automatically renew for a subsequent equal Term unless terminated according to Section 6.7 below. As used herein, "Term" shall mean the Initial Term and any applicable Renewal Terms. Except to the extent otherwise provided herein, the Term is non-cancelable.
- 2.2 Non-Renewal. If Customer elects not to renew, Customer must provide written notice to Bigbelly at least three (3) months prior to the expiration of the current Term.

3.0 Fees Payable by Customer

- 3.1 Fees. In compensation for the Service described in this Agreement, Customer agrees to pay the Service Fee specified in the Service Schedule and any fees payable for additional customization and/or services. Fees shall become payable on the date by which all the Equipment ordered pursuant to this Agreement has been delivered to the Customer. Bigbelly shall submit invoices to Customer during the Term of this Agreement per the Payment Terms outlined in the Service Schedule and Customer shall pay each invoice on the date due. All payments shall be made by check or, at Customer's option, may be automatically deposited to the account of Bigbelly as authorized by Customer by means of Customer submitting a signed Pre-authorization Payment Form ("PAF") identical to the PAF attached hereto as Attachment B. Any failure by Bigbelly to provide an invoice in a timely manner shall not affect Customer's obligation to make payments. Whenever any sum due hereunder is not paid when due, Customer agrees to pay to Bigbelly, on the next due date, a late charge equal to five percent (5%) of the amount of such late payment (but not less than \$10.00), but only to the extent permitted by law. Late payments shall be subject to interest at the rate of eighteen percent (18%) per annum.
- 3.2 Service Fee Prices. Service Fee Prices are guaranteed for the first twenty-four (24) months of Service. Thereafter, Service Fee Prices shall not increase over the amounts charged for the immediately preceding Term by more than the rate of inflation as reflected by the Consumer Price Index – Urban for all US Cities, unadjusted ("CPI-U"). Bigbelly will provide Customer at least 120 days prior notice of a price change.

4.0 Obligations of the Parties

4.1 Bigbelly's Obligations

- (A) Equipment. Bigbelly will supply the Equipment identified in the Service Schedule on a rental basis to Customer for the Term of the Agreement. The Equipment will be either new and/or Bigbelly refurbished equipment.
- (B) System Software. The CLEAN Software License Agreement includes communication services and access to the CLEAN Management Console and CLEAN Mobile. Customer's use of the Software is subject to the CLEAN™ Software License Agreement.
- (C) Equipment Delivery. Bigbelly will deliver the Equipment at Customer's expense to Customer's receiving dock or to a location mutually agreed upon by the parties before the shipment. Bigbelly hereby warrants that its Equipment is:

(a) good and merchantable, (b) free from defects and malfunctions, (c) free of liens, security interests or other encumbrances, (d) complies with all applicable laws, rules, regulations, and orders, and (e) is fit for the purpose for which the Equipment is intended.

(D) Station Installation. Bigbelly Equipment will be installed at mutually agreed upon locations, including semi-permanent attachment to the ground. Installation will be in accordance with the delivery and installation schedule agreed to by the parties.

(E) Setup and Training. Bigbelly shall, at its expense, provide Customer Equipment and Software setup and training. The parties shall agree upon the location and method of training.

(F) Warranty - Defective Part Replacement and Repair. Replacement parts required due to manufacturer defects or workmanship will be provided by Bigbelly at no cost to Customer. All other repairs and part replacements, including but not limited to, repairs or replacements required as a result of external trauma or damage (including but not limited to vehicle strikes or vandalism) are specifically excluded and must be repaired or replaced at Customer's expense. Custom add-ons including vinyl wraps purchased by Customer are not covered by this warranty and repair and replacement shall be at Customer's expense, unless the damage is caused by Bigbelly or its employees, subcontractors or representatives, in which case any repair or replacement will be at Bigbelly's expense.

(G) Customer Support and Equipment Maintenance. Except for losses described in Section 5.2 below, Bigbelly will support the Customer in the maintenance of the Equipment at its sole discretion and expense in order to optimize up time. Technical Customer Support is available Monday through Friday, 7am to 6 pm EST to guide Customer in troubleshooting, repair and replacement efforts and to assist with parts ordering. In addition, Bigbelly maintains a network of trained Field Service professionals available for dispatch upon Customer request to investigate and resolve issues in the field.

Equipment batteries will be provided at no cost to Customer during the Term of the Agreement at Bigbelly's discretion, but no less frequently than necessary for the normal operation of the Equipment. If station operating conditions change such that insufficient sunlight is available for normal station operations (for example, Customer moves station into storage and fails to switch off station or places station under awning), and as a result the equipment battery fails prematurely, battery will be replaced at Customer expense.

(H) Removal. Upon termination, Bigbelly will de-install and remove the Equipment at Customer's expense. Equipment so removed shall be in operational condition and free of any damage for which Customer is responsible pursuant to Section 5.2 below.

(I) Subcontractor Services. Bigbelly may contract with third parties to provide the Service.

4.2 Customer's Obligations

(A) Customer Information & Access. Customer agrees that Bigbelly's ability to perform the Service under the Agreement in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by this Agreement shall be extended in the event that Customer fails to provide such information and/or access in a timely manner.

(B) Shipping. Customer agrees to pay for shipping expenses and to provide an appropriate facility that can receive, inspect and stage all Bigbelly Equipment until the Equipment is installed.

(C) Site Preparation. Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly specifications. If Customer's installation surface does not meet such specifications, any additional cost associated with Bigbelly's efforts to properly prepare the surface will be at Customer's expense. It is the Customer's responsibility to remove, at Customer's expense, existing bins or any other items from the locations where Bigbelly stations will be installed.

(D) Operational Safety. Customer agrees to provide immediate notice to Bigbelly with respect to any damage or other event which causes the Equipment to pose a public safety issue or create unsafe operating conditions and Customer shall take prompt action if necessary, to eliminate such public or operator safety issues. Customer will promptly service or replace any Equipment that Customer has identified as causing a public safety issue or creating unsafe operating conditions. If after applying best effort, Customer cannot resolve the issue, Customer will contact Bigbelly Customer Service and Bigbelly will resolve the issue at Bigbelly's expense, unless unsafe operating condition is due to losses described in Section 5.2.

- (E) Automated System Monitoring & Customer Support Escalation - Customer will respond to routine maintenance and repair issues they observe or are notified of via automated CLEAN alerts. Customer will use best efforts to promptly resolve issues and may contact Bigbelly Customer Service to receive troubleshooting assistance and instructions for proper repair. If a replacement part is needed to resolve the issue, Customer will contact Bigbelly Customer Service to request a part(s). If Customer best efforts do not resolve the issue, Customer should contact Bigbelly Customer Service.

If Bigbelly Field Service is dispatched and Bigbelly determines the issue is due to failure of Customer to provide best effort, to Customer error, or to damage as described in Section 5.2 below, Bigbelly reserves the right to bill Customer for incurred expense. Furthermore, if a replacement part is provided and Bigbelly determines that the original part failed due to misuse or abuse, Customer is responsible for replacement cost per Section 5.2 below.

- (F) Cleaning & Inspection – Up to five (5) cleaning and inspection visits from Bigbelly are included during the Term of this Agreement. One cleaning and inspection visit per every 12-month period shall be made available upon request at no cost to Customer. Customer will use best efforts to maintain general cleanliness of Equipment throughout the contract Term. If, after applying best effort to maintain Equipment cleanliness, Customer finds equipment needs an additional cleaning and inspection visit, Customer may contact Bigbelly Customer Support to request a cleaning and inspection visit. Additional cleaning and inspection visits that are not included in the terms of this Agreement will be at Customer's expense.

- (G) Insurance. This Section 4.2(G) shall not be applicable if Customer has provided evidence of self-insurance acceptable to Bigbelly and maintains such self-insurance in full force and effect. During the Term of this Agreement, Customer will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost thereof, with deductible not to exceed \$15,000.00 and without co-insurance. Customer will also maintain for the Term of this Agreement, commercial general liability insurance covering both bodily injury and property damage of at least \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Bigbelly and its assigns will be named as loss payee on the Property insurance and additional insured on General Liability insurance. Customer will pay all premiums for such insurance and must deliver proof of insurance coverage satisfactory to Bigbelly. If Customer does not provide such insurance, it agrees that Bigbelly has the right, but not the obligation, to obtain insurance against theft and physical damage and add an insurance fee to the amount due from Customer, upon which Bigbelly may make a profit.

- (H) Equipment Relocation. Within five (5) business days following relocation of any Equipment, Customer shall notify Bigbelly in writing of the specific location of such Equipment.

5.0 Equipment Rental Terms and Conditions

5.1 Title To and Use of Equipment

- (A) Title. As further set forth in Section 6.4 below, Bigbelly is and will at all times be the sole owner of the Equipment. Customer shall not acquire any title or interest, legal or equitable, in the Equipment, other than the use rights set forth in this Agreement. In the event this Agreement is deemed to be disguised sale, Customer hereby grants to Bigbelly a security interest in the Equipment (and all accessions thereto and substitutions therefore) and the proceeds thereof.
- (B) Use of Equipment. Customer shall not use the Equipment for other than intended purposes. Customer shall ensure safe operation of the Equipment by trained personnel. Customer shall comply with all Bigbelly and governmental guidelines, laws, rules, regulations and ordinances applicable to the use and operation of the Equipment.
- (C) No Pledge. Customer shall not pledge, lend, create a security interest in or permit any lien to attach to the Equipment or any part thereof or attempt in any other manner to dispose the Equipment.
- (D) No Attachments. Customer represents and warrants that the Equipment is, and shall at all times remain, fully removable personal property notwithstanding any affixation or attachment to real property or improvements. Customer shall give Bigbelly immediate notice of any such attachment or other judicial process affecting the Equipment and shall immediately take all action necessary to remove such attachment and terminate the effect of such judicial process on the Equipment.
- (E) Equipment Inspection Rights. Bigbelly and its agents shall have the right to enter any premises where Equipment is located to inspect such Equipment at any time with reasonable advance written notice to Customer.

5.2 Risk of Loss. From the time of delivery of Equipment by Bigbelly to Customer until the Equipment is removed by Bigbelly, Customer will bear the entire risk of whole or partial loss, theft, destruction or damage to the Equipment resulting from any causes other than Bigbelly's or its employees' or contractors' agents' actions or omissions with respect to the Equipment or defects, flaws or malfunctions in the Equipment, or requisition of the Equipment by any governmental entity, or expropriation or the taking of the Equipment by eminent domain or otherwise (collectively, "Loss"). Customer will give Bigbelly written notice within 10 days of any Loss ("Loss Notice"). If any Equipment is damaged and can be economically repaired, Bigbelly will promptly repair such Equipment to good working order and condition and Customer agrees to immediately pay, on demand, all costs and expenses incurred by Bigbelly in connection therewith. If any Equipment is damaged and cannot be economically repaired, Bigbelly will promptly replace such Equipment and Customer agrees to immediately pay Bigbelly, on demand, the replacement cost of such Equipment and all costs and expenses incurred by Bigbelly in connection with such replacement. Subject to Bigbelly's obligations under this Section 5.2, this Agreement shall remain in full force and effect notwithstanding any Loss.

6.0 General Terms and Conditions

6.1 Taxes and Other Charges. Customer is responsible for all taxes (including sales, use and personal property tax), fees, and assessments (collectively, "Taxes") that may be imposed by any governmental entity or taxing authority in connection with this Agreement or the Equipment or any amount due hereunder. Customer will reimburse Bigbelly (or pay directly to the applicable taxing authority if instructed in writing by Bigbelly) for all such Taxes except to the extent Customer is tax-exempt and has delivered to Bigbelly a valid and current tax exemption certificate as reasonably determined by Bigbelly.

6.2 Service. Customer agrees that during the Term of the Agreement, it shall keep in effect the Service as defined in the Agreement. Unless otherwise agreed in a written amendment to this Agreement, Bigbelly or its subcontractors shall be the sole and exclusive suppliers of the Service.

6.3 Additions and Modifications of Equipment. Unless otherwise expressly agreed by an officer of Bigbelly in writing, Customer shall not make any additions, alterations or modifications to the Equipment. Customer shall not remove, cover or damage any Bigbelly logos or other identification markings on the Equipment.

6.4 Ownership Rights. The Equipment and Software contain intellectual property including but not limited to patented and unpatented inventions, trade secrets, know-how, and copyrights all of which is owned and will continue to be owned exclusively by Bigbelly and/or its licensors and Customer will obtain no rights thereto other than the limited rights of use under this Agreement. Customer acknowledges and agrees that all technology, materials, hardware, software, content and data of which the Equipment and Software is comprised or which is otherwise contained within or attached to, generated, collected or processed by the Equipment and/or Software is the sole and exclusive property of Bigbelly. Bigbelly hereby grants Customer a royalty-free, non-exclusive, fully paid up right and license to use the Equipment, the Software, and any intellectual property rights therein as necessary for Customer and its contractors to use the Equipment and Bigbelly Service consistent with the terms and conditions of the Agreement and these Terms and Conditions. Bigbelly reserves the right, at its sole cost and expense and subject to applicable governmental guidelines, laws, rules, regulations and ordinances, at any time upon notice to Customer, to enhance or otherwise modify the Equipment and/or Software made available to Customer under this Agreement, including but not limited to enhancements or modifications for the purpose of implementing Wi-Fi network capability to the Equipment, instituting mechanisms for data collection, processing and analysis. Bigbelly retains all media rights associated with signage, and Customer agrees not to post signage and/or advertisements on the Equipment without written approval by Bigbelly. For avoidance of doubt, this does not prohibit customer from displaying messages solely on behalf of customer such as public service messages.

6.5 Termination

(A) Effect of Termination. Except as provided for in Section 6.7 below, any termination of the Agreement by Customer, with or without cause, shall not relieve Customer of its obligations to make any and all payments due under this Agreement.

(B) Post Termination Duties / Surrender of Equipment. Upon the expiration or earlier termination or cancellation of the Agreement, Bigbelly shall remove the Equipment as described in Section 4.1 (H) above.

6.6 Indemnifications by the Parties

(A) Indemnity by Bigbelly. Bigbelly shall indemnify, defend, and hold Customer and its directors, officers and employees, harmless, and defend Customer and its representatives if it requests, as to all claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Customer or its representatives because of (a) any breach or alleged breach by Bigbelly of any of its warranties to, or agreements

with, Customer, (b) any claim that any of the product or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by Bigbelly's negligent performance of the Service. In no event will Bigbelly be liable for or indemnify Customer against any damage, claim or injury arising out of Customer's or any third party's actions, including but not limited to accidental or intentional tampering with the Equipment. Notwithstanding the foregoing however, Bigbelly's maximum liability with respect to subsection (b) herein shall be limited to twice the amount of fees paid by Customer with respect to the infringing product or services.

- (B) Indemnity by Customer. Customer shall indemnify and hold Bigbelly and each of their directors, officers and employees, harmless, and defend Bigbelly and its representatives if it requests, as to all claims, liabilities, losses, damages and expenses (including without limitation, reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Bigbelly and/or its representatives because of (a) any breach or alleged breach by Customer of any of its representations, warranties, or agreements with Bigbelly, (b) any claim that any of the information provided by Customer to Bigbelly infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by or resulting from Customer's negligence in operating or securing the Equipment.
- (C) Survival of Indemnity. The rights and obligations of Customer and Bigbelly under this Section 6.6 survive the termination, cancellation or expiration of this Agreement.

6.7 Default; Dispute Settlement; Governing Law

- (A) Definition of Default. The term "Default" means any of the following events: (i) Customer fails to make any payment required under this Agreement within ten days after the same shall have become due; (ii) Customer or Bigbelly fails to perform any other obligation under this Agreement and such non-performance is not cured within thirty (30) days following notice or Customer fails to provide insurance as required under this Agreement; (iii) Customer defaults under any other Agreement with Bigbelly (iv) Customer or Bigbelly becomes insolvent or makes an assignment for the benefit of its creditors; (v) a receiver, trustee, conservator or liquidator of Customer or Bigbelly of all or a substantial part of such party's assets is appointed with or without the application or consent of such party; (vi) a petition is filed by or against Customer or Bigbelly under any bankruptcy, insolvency or similar law; (vii) any warranty or representation made by either party herein proves to have been false or misleading when made; or, (viii) there is a material adverse change in Customer's financial condition.
- (B) Default by Customer. Upon the occurrence of a Default by Customer, Bigbelly may do one or more of the following as Bigbelly in its sole discretion shall elect: (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance by Customer of the Agreement or to recover damages for the breach thereof; (ii) cause Customer, at its expense, to promptly return the Equipment to Bigbelly at such place as Bigbelly designates in writing; (iii) by notice in writing to Customer, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) enter upon, or instruct its agents or assigns to enter upon, the premises of Customer or other premises where any Equipment may be located and take possession of and remove all or any portion of such Equipment without liability to Customer by reason of such entry or taking possession; (v) require Customer to pay to Bigbelly immediately upon demand, in addition to all amounts then due under this Agreement, liquidated damages in the amount of the greater of (A) eighty percent (80%) of the remaining Service fees to become due during the Initial Term or (B) one year of Service fees, which amount, owing to the acknowledged difficulty in establishing a value for the unexpired Initial Term, the parties agree represents an agreed upon reasonable measure of damages and is not to be deemed a forfeiture or penalty; (vi) charge Customer interest on all monies due Bigbelly at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law; (vii) collect from Customer all expenses incurred by Bigbelly in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (viii) exercise any other right or remedy available to Bigbelly under applicable law.
- (C) Default by Bigbelly. Upon the occurrence of a Bigbelly Default, Customer may do one or more of the following as Customer in its sole discretion shall elect; (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance of the Agreement or recover damages for the breach thereof; (ii) cause Bigbelly, at its expense, to promptly collect the Equipment; (iii) by notice in writing to Bigbelly, cancel or terminate the Agreement, without prejudice to any other remedies

hereunder; (iv) collect from Bigbelly all expenses incurred by Customer in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (v) exercise any other right or remedy available to Customer under applicable law.

(D) Dispute Settlement. In the event of any dispute arising due to a Default or with respect to the terms of the Agreement or obligations of the parties, the parties agree to discuss the dispute in an attempt to amicably resolve such dispute within 30 days of the date of a written notice of such dispute by one party to the other. Failing any such resolution, either party will be free to seek remedy through a court of competent jurisdiction.

(E) Continuation of Obligations. The occurrence of a dispute under or relating to the Agreement shall not relieve Bigbelly of, or change in any way, Bigbelly's obligation to provide the Service in accordance with the terms of the Agreement nor shall the occurrence of a dispute under or relating to the Agreement relieve Customer of its obligations to make any and all payments described in the Agreement, including the Attachments.

(F) Governing Law. The Agreement including the Attachments shall be interpreted under the laws of the courts of the State of Massachusetts, without regard to principles of conflicts of law or the United Nations Convention on the International Sale of Goods. Each party consents to the personal jurisdiction of federal and state courts located in Boston, Massachusetts. Customer agrees that service of process in any action or proceeding may be duly affected upon Customer by mailing such process via certified mail, return receipt requested or as otherwise provided under applicable law. EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE EQUIPMENT.

6.8 Assignment. Customer may not assign this Agreement or any rights hereunder, or sublease or lend any Equipment without the prior written consent of Bigbelly. No assignment or sublease shall relieve Customer of its obligations hereunder and Customer shall remain primarily liable for such obligations. Any sale, assignment, transfer, encumbrance, delegation, or sublease by Customer not consented to by Bigbelly shall be void ab initio. Bigbelly may at any time assign to any person (an "Assignee") any interest in this Agreement in part or in whole or grant security interests in the Equipment and/or the Bigbelly's rights hereunder. In such event, all the provisions of this Agreement for the benefit of Bigbelly shall inure to the benefit of and be exercised by or on behalf of such Assignee, but the Assignee shall not be liable for or be required to perform any of Bigbelly's obligations to Customer and Bigbelly shall retain such obligations. Customer acknowledges that any such assignment shall not materially change Customer's duties or obligations hereunder. Subject to the foregoing, the Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.

6.9 Relationship of Parties. Bigbelly and Customer are each independent entities and the relationship between Bigbelly and Customer under the Agreement is not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship. Bigbelly has no authority to make any promise, commitment or agreement on Customer's behalf, and Bigbelly will not represent to anyone that it does have such authority.

6.10 Notices. Each notice provided for in the Agreement shall be given in writing and become effective when:

(A) served by personal delivery to the recipient's Legal Department or Contract Administrator;

Customer: _____	BIG BELLY SOLAR, INC.:
Name: _____	Jeff Wakely
Title: _____	CFO
Address: _____	150 A Street, #103
_____	Needham, MA 02494

(B) deposited, postage prepaid in the United States registered or certified mails addressed to the recipient's Legal Department or Contract Administrator;

(C) dispatched to the recipient's Legal Department or Contract Administrator via overnight mail using UPS, Federal Express or similar carrier; or,

(D) sent to recipient's Legal Department or Contract Administrator: via facsimile or other electronic means if delivery does not require a signature or other confirmation of delivery.

- 6.11 Force Majeure. Any delay or failure of either party to perform its obligations (other than payment obligations) shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Raw material or labor shortages are not force majeure events. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.
- 6.12 No Warranties. Customer hereby acknowledges that it has not entered into the Agreement including the Attachments in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth therein.
- 6.13 Use of Trade Names and Trademarks. Neither party may use the trade name, service mark, logo or trademark of the other party for any purpose without previous permission in writing from the other party.
- 6.14 Damages. Unless otherwise provided in the Agreement, in no event shall either party, or its affiliates, shareholders, officers, directors, employees, agents, or representatives, or assigns be liable for lost revenue, lost profits, incidental, indirect or consequential damages, resulting from any aspect of the Service provided in connection with this Agreement. Bigbelly's maximum aggregate liability to Customer in relation to or in connection with the Agreement will be limited to the total amount paid by Customer to Bigbelly under the Agreement.
- 6.15 Injunctive Relief. If there is a breach or threat of a breach of the terms of the Agreement, the parties agree that compensation alone would not be an adequate remedy for the harm suffered by the non-breaching party, which harm would be immediate and irreparable. Therefore, if there is a breach or threatened breach, then the non-breaching party shall be entitled to seek injunctive relief to stop the breach or threatened breach. The rights and obligations of the parties under this provision survive the termination, cancellation, or expiration of the Agreement.
- 6.16 Representations. This Section 6.16 is not applicable if Customer is a governmental entity, agency or authority. Customer hereby represents, warrants and covenants to Bigbelly that: (a) Customer is organized and validly existing under the laws of the jurisdiction of its organization, with adequate power and capacity to enter into the Agreement and any other documents, instrument or agreement related to this Agreement; (b) The Agreement has been duly authorized, executed and delivered by Customer and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms, except to the extent that the enforcement of remedies therein provided may be limited under applicable bankruptcy and insolvency laws; (c) no approval, consent or withholding of objections is required from any governmental authority or instrumentality with respect to the entry into or performance by Customer of the Agreement, except such as have already been obtained; (d) there are no suits or proceedings pending or threatened in court or before any regulatory commission, board or other administrative governmental agency against or affecting Customer, which will have a material adverse effect on the ability of Customer to fulfill its obligations and liabilities under the Agreement.
- 6.17 Fiscal Funding. This Section 6.17 is effective only if Customer is a governmental entity, agency or authority. Customer hereby represents and warrants to Bigbelly that: (a) Customer is a State, possession of the United States, the District of Columbia, or political subdivision thereof as defined in Section 103 of the Internal Revenue Code and Treasury Regulations and Rulings related thereto (the "Code"); (b) If Customer is incorporated, it is duly organized and existing under the Constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect; (c) Customer has been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Bigbelly, is attached hereto), to execute and deliver the Agreement and to carry out its obligations hereunder; (d) All legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of the Agreement; (e) The Equipment will be used by Customer only for essential governmental or proprietary functions of Customer consistent with the scope of Customer's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use. Customer's need for the Equipment is not expected to diminish during the term of the Agreement; (f) Customer has funds available to pay contracted Payments until the end of its current appropriation period, and it intends to request funds to make contracted Payments in each appropriation period, from now until the end of the term of the Agreement; and (g) The Customer shall comply at all times with all applicable requirements of the Code. If sufficient funds are not appropriated to make contracted payments under the Agreement ("Payments"), the Agreement shall terminate and Customer shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which

funds have been appropriated. Upon such an event, Customer shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to Bigbelly. If Customer fails to deliver possession of the Equipment to Bigbelly, the termination shall nevertheless be effective but Customer shall be responsible for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which the Customer fails to deliver possession and for any other loss suffered by Bigbelly as a result of Customer's failure to deliver possession as required. Customer shall notify Bigbelly in writing within seven (7) days after the failure of the Customer to appropriate funds sufficient for the payment of the contracted Payments, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to Customer.

6.18 Entire Agreement. The Agreement including the Attachments constitute the entire agreement between the parties regarding its subject matter and supersede all prior agreements, oral and written, negotiations, commitments and writings, and may not be released, discharged, abandoned, changed or modified in any manner, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each party. Any purchase order or other ordering document issued by Customer is for administrative purposes only and does not form part of this Agreement. If there is an inconsistency between or among the documents listed below, then the following order of precedence shall govern:

- (a) Attachment A
- (b) Attachment B
- (c) The Agreement

6.19 Amendment; Modification; Waiver. No modification, amendment, waiver or release of any provision of the Agreement or any right, obligation, claim or cause of action arising under the Agreement shall be valid or binding unless in writing and duly executed by the party against whom enforcement is sought. No waiver by either party of any breach, or the failure of either party to enforce any of the terms and conditions of the Agreement, shall affect, limit or waive that party's right to enforce and compel compliance with all terms and conditions of the Agreement or to terminate the Agreement as permitted by its terms. Any provision of this Agreement which for any reason may be held unenforceable in any one jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such unenforceability in any one jurisdiction shall not render such provision unenforceable in any other jurisdiction. This Agreement may be executed in any number of counterparts and by different parties hereto or thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together consist of but one and the same instrument.

End of Attachment A.

BILLING INFORMATION FORM

PLEASE COMPLETE THIS FORM AND RETURN WITH DOCUMENTS

In order for Big Belly Solar, Inc. to properly bill and credit your account, it is necessary that you complete this form and return it with the signed documents.

Billing Name: _____

If you would like your invoices emailed to you in place of regular mail, please provide an email address(es) below:

Billing Address: _____

Attention: _____

Telephone Number: _____

Federal ID#: _____

SPECIAL INSTRUCTIONS

Do you require a Purchase Order Number on the invoice? Yes No

If yes, please provide the PO# _____ and attach a copy of the purchase order (front & back) for our file.

Is a new purchase order required for each new fiscal year period? Yes No

If yes, provide month/year PO expires _____

Do you have multiple contracts, and would you like them all billed on one invoice (Summary Billing)? Yes
 No

Are you sales tax exempt? **If yes, please attach a copy of exempt certificate or direct pay permit.** Yes No

Do you require any special information to establish a vendor number for _____? Yes No

If yes, please advise: _____

Additional Comments: _____
