



# COUNCIL SPECIAL SESSION

Friday, October 20, 2023 at 12:00 PM

---

## COUNCIL MEMBERS:

Mayor Rick Scholl  
Council President Jessica Chilton  
Councilor Mark Gundersen  
Councilor Russell Hubbard  
Councilor Brandon Sundeen

## LOCATION & CONTACT:

Via Zoom (details below)  
Website | [www.sthelensoregon.gov](http://www.sthelensoregon.gov)  
Email | [kpayne@sthelensoregon.gov](mailto:kpayne@sthelensoregon.gov)  
Phone | 503-397-6272  
Fax | 503-397-4016

---

## AGENDA

### CALL SPECIAL SESSION TO ORDER

### DISCUSSION TOPICS

1. Review Non-Binding Letter of Interest for Purchase or Lease of Real Property Located at 1300 Kaster Road

### APPROVE AND AUTHORIZE FOR SIGNATURE

2. Non-Binding Letter of Interest for Purchase or Lease of Real Property Located at 1300 Kaster Road

### ADJOURN

### VIRTUAL MEETING DETAILS

Join: <https://us02web.zoom.us/j/89737325405?pwd=UVJLNk5Yc3pSM3IKL0pGcnJNOERrdz09>

Meeting ID: 897 3732 5405

Passcode: 601805

Dial: 253-215-8782

---

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to City Hall at 503-397-6272.

Be a part of the vision and get involved...volunteer for a City Board or Commission! For more information or for an application, go to [www.sthelensoregon.gov](http://www.sthelensoregon.gov) or call 503-366-8217.

October 18, 2023

American Hyperion Solar LLC  
1101 Marina Village Parkway, Suite 201,  
Alameda, CA 94501

**Re: Non-Binding Letter of Interest for Purchase of Real Property**

Dear City of St Helens,

This non-binding letter of interest (this "LOI") establishes the interest of American Hyperion Solar LLC ("Buyer") to acquire from City of St Helens, an Oregon municipal corporation the ("Seller") the "Real Property" described below, upon the following general terms:

**1. Prospective Transaction**

The fee simple sale of the real property located at **1300 Kaster Rd. St. Helens, OR 97051** ("Real Property") from the Seller to the Buyer (the "Transaction").

**2. Purchase Price and Critical Terms**

- a. Real Property to be Purchased or Leased: Buyer will purchase the Real Property subject to all matters of record affecting the Real Property, save and except for (i) existing security interests, mortgages, that can be removed by payment by Seller, and (ii) such other items as Seller agrees, in its sole discretion, to remove pursuant to the title objection and cure provisions set forth in the PSA.
- b. As-Is Sale or Lease: The Real Property shall be sold or leased to the Buyer in its "As Is, Where Is" condition without warranty (implied or express) except as specifically set forth in the PSA (defined below). If it is a sale, the Real Property will be conveyed to Buyer pursuant to a Bargain and Sale Deed at Closing of the Transaction.
- c. Consideration: The aggregate consideration for the Real Property will be [TBD]
- d. Earnest Money Deposit: Within three (3) days of complete execution of the PSA, Buyer agrees to deposit Six Hundred Ten Thousand Dollars (\$610,000) (the "Earnest Money") in escrow with 10% non-refundable fee. Title Company shall act as the closing escrow agent with respect to the Transaction and the title company issuing title insurance upon the Real Property at Closing. The Earnest Money shall be refundable to Buyer during the Due Diligence Review period upon written termination of the PSA by Buyer in accordance with the terms provided in Section 3 below. After expiration of the Due Diligence Period, the Earnest Money shall be non-refundable to Buyer except as expressly provided otherwise in the PSA.

**3. Due Diligence Review**

For a period of 90 days from the date of full execution of the PSA, Buyer will be entitled to inspect and analyze the Real Property, including conduct site inspections (provided that invasive testing shall be subject to Seller's prior consent in its discretion) and other traditional due diligence investigations at the Real Property, subject to such rules and limitations as may be established in the PSA. Seller will provide to Buyer, for Buyer's review during the Due Diligence Review period, a set of standard due diligence documents and information related to the Real Property, the exact list of such items shall be more specifically identified in the PSA (defined below). Such information shall be subject to certain confidentiality requirements and limitations, as shall be set forth in greater detail in the PSA.

The Parties may mutually agree to extend the Due Diligence review period.

#### **4. Contingencies**

Before the expiration of the Due Diligence Review period identified above, Buyer must be satisfied with the due diligence review and information and documents provided by Seller, as well as verification of all permits and licenses and an agreement on the terms of the definitive agreement. If such satisfaction has not occurred prior to the expiration of the Due Diligence Review period, Buyer may terminate the PSA upon written notice before the expiration of the review period and receive a return of its earnest money deposit minus 10% non-refundable fee of the total earnest deposit.

#### **5. Closing Date.**

The buyer's acquisition of the Real Property shall occur on the 30<sup>th</sup> day after the expiration, or earlier waiver, of the Due Diligence Review period set forth in Section 3 above. Buyer shall deliver the entire Purchase Price for the Real Property (subject to application of the Earnest Money against such amount owing) in cash or other immediately available U.S. federal funds at Closing, and the parties shall deliver the closing deliverables to be identified in the PSA.

#### **6. Definitive Agreement**

Because this Agreement is a non-binding manifestation of the parties' interest in attempting to negotiate a binding agreement, the parties agree that neither party shall be bound with respect to the purchase and sale of the Real Property until after both parties execute a formal written agreement with respect to the purchase and sale of or the lease with option to buy the Real Property (the "PSA"), as shall be negotiated by the parties and their respective legal counsel.

#### **7. Exclusive Negotiation Period**

The Seller agrees that, during the 90 Days period following the date of full execution of this LOI, it will not negotiate or agree to negotiate, whether directly or indirectly, with any other party concerning the sale of its Real Property, so as to provide Buyer with an opportunity to negotiate a potential PSA with Seller. Notwithstanding the foregoing, in no event shall this LOI create any obligation upon Seller to agree to execute the PSA and/or sell the Real Property to Buyer if Seller, in its sole and exclusive discretion and with or without cause or reason, elects not to enter into a binding PSA with Buyer. Upon expiration of the foregoing 90 Days period, the restrictions in this Section 7 shall immediately and automatically terminate, and Seller may thereafter negotiate or market the sale of the Real Property as it deems appropriate in its sole discretion. The Seller agrees that, during the term of the PSA, it will continue to operate and maintain the Real Property in the same manner and condition as it has prior in the time prior to the execution of the PSA. To induce Seller to grant to Buyer the \_\_\_-day period exclusive negotiation period provided in this Section above, Buyer has agreed to pay to Seller a non-refundable \$61,000 "exclusive negotiation fee. The seller would not have agreed to grant such an exclusive negotiation period without receipt of the aforementioned fee. Consistent with the terms of this LOI, in no event shall payment and receipt of this exclusive negotiation fee create any binding obligation upon Seller to enter a PSA or to convey the Real Property to Buyer.

#### **8. Public Announcements and Confidentiality Agreement**

The Parties agree not to release any information to the public regarding the Letter of any potential agreement without the separate written consent of all parties involved. The parties agree that any information concerning the transaction contemplated within this Letter shall remain confidential; provided, however, that the parties may disclose information concerning the transaction to the public or governmental agencies if, in the judgment of their respective legal counsels, such disclosure is necessary to comply with applicable law.

**9. Non-Bonding Agreement**

The parties agree to be bound by Sections 7 and 8 above. However, the parties are not bound or otherwise obligated by any other term herein and that no such term creates any rights or obligations whatsoever. As provided herein above, this LOI shall in no event create any contractual right of Buyer with respect to the Real Property, nor shall it create any obligation upon Seller to enter into a PSA or to convey the Real Property to Buyer.

**10. Expenses Associated with this Letter and Due Diligence**

The Parties agree to bear their own expenses, including attorney’s and professional fees associated with any due diligence or any other matter associated with this Prospective Transaction. Closing costs at Closing of the sale shall be prorated and allocated in accordance with the local custom in the Portland, Oregon metropolitan area for commercial real estate transactions.

**11. Governing Law**

This Letter shall be governed by the laws of the state of Oregon.

Please sign where indicated on each copy of this non-binding Letter of Interest and return one copy to us.

Very truly yours,

**Understood, Agreed & Accepted**



\_\_\_\_\_  
Jusong Wang, Ph.D  
Managing Director  
American Hyperion Solar LLC

**Understood, Agreed & Accepted**

\_\_\_\_\_  
Rick Scholl  
Mayor City of St Helens