

RESOLUTION 2022-ZZ

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
AMENDMENT WITH BONNEVILLE POWER ADMINISTRATION**

WHEREAS, Bonneville Power Administration (“BPA”) provides power purchased for resale to the Town of Eatonville (“Town”); and

WHEREAS, BPA and the Town have an Energy Conservation Agreement Contract (“Contract”) that expires September 30, 2022, attached hereto as Exhibit B; and

WHEREAS, this amendment extends the term date, adds conditions for the new Energy Efficiency Tracking Systems, updates payment of approved invoice payment amounts, updates the uncontrollable forces clause and updates the contact information; and

WHEREAS, BPA and the Town wish to amend the current contract and extend the contract term date to September 30, 2028; now, therefore

**THE COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY
RESOLVES AS FOLLOWS:**

THAT: The Mayor is authorized to execute on behalf of the Town Amendment No. 02 to the Energy Conservation Agreement Contract, attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 10th day of October 2022.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

Amendment No. 02
17ES-11474

AMENDMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
TOWN OF EATONVILLE

This AMENDMENT to the Energy Conservation Agreement Contract 17ES-11474 (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and TOWN OF EATONVILLE (Eatonville), hereinafter individually referred to as “Party” and collectively referred to as the “Parties”.

This Amendment No. 02 (Amendment) replaces section 1 of the Agreement to extend the term of the Agreement through September 30, 2028; adds terms and conditions for the new Energy Efficiency Tracking System; updates section 6, Payment of Approved Invoice Payment Amounts; updates the Uncontrollable Forces clause in section 11(b); and updates the contact information in Exhibit A.

BPA and Eatonville agree:

1. TERM

This Amendment shall take effect on the date signed by both Parties.

2. AMENDMENTS TO BODY OF THE AGREEMENT

(a) Section 1, Term shall be deleted and replaced with the following:

“This Agreement takes effect on the date signed by the Parties. This Agreement expires on September 30, 2028, unless terminated earlier as provided in section 13, Termination. Performance by BPA and Eatonville shall commence on October 1, 2017, with the exception of those actions required prior to that date included in section 3(a) and section 3(b). All obligations under this Agreement shall be preserved until discharged or satisfied.”

(b) Section 2(b) shall be deleted and replaced with the following:

“(b) “Available Implementation Budget” means the amount available for BPA to purchase Energy Savings from a specific Program Participant at a given point in time equal to the Program Participant’s Initial Implementation Budget, plus any applicable Carryover Amount, plus

or minus any applicable Implementation Budget Transfers, minus any applicable Approved Invoice Payment Amounts.”

- (c) A new section 2(c) shall be added as follows and all subsequent definitions in section 2 shall be renumbered accordingly:
 - “(c) “Bonneville Energy Efficiency Tracking System” or “BEETS” means the reporting system established by BPA and intended to supersede BPA’s IS2.0 reporting system.”
- (d) The definition of “Rollover Amount” in section 2(l) shall be revised and moved to a new section 2(d) as follows. All subsequent definitions in section 2 shall again be renumbered accordingly:
 - “(d) “Carryover Amount” means an amount of a Program Participant’s budget remaining at the end of a given Rate Period that may carry forward to increase the amount of that Program Participant’s Available Implementation Budget for the following Rate Period.”
- (e) Section 3(c) shall be deleted and replaced with the following:
 - “(c) **Carryover Amount**
As applicable and in accordance with the terms and conditions in the Implementation Manual, BPA shall calculate Eatonville’s Carryover Amount and incorporate a Carryover Amount into Eatonville’s Available Implementation Budget for each Rate Period. By November 15, 2017, and no later than November 15 every two years thereafter, BPA shall notify Eatonville of its applicable Carryover Amount for the remainder of the Rate Period.”
- (f) Section 5 shall be deleted and replaced with the following:
 - “**5. INVOICING PROCESS**
BPA will notify Eatonville when Eatonville shall stop submitting invoice packages to BPA through IS2.0 and start submitting invoice packages and invoices to BPA through BEETS or its successor.
 - (a) **Documentation and Submittal of Invoice Packages**
Eatonville shall comply with the documentation requirements in the Implementation Manual.

As applicable, Eatonville shall execute and maintain a BPA Customer Portal Access and Use Agreement in order to submit invoice packages to BPA while still reporting through IS2.0.

Whether seeking Self-Funded Energy Savings or for BPA payment for Energy Savings, Eatonville shall submit its invoice packages, including any required reports and documentation, in accordance with the reporting requirements

in the Implementation Manual. If there is a disagreement regarding the completeness or accuracy of any submitted invoice packages, as applicable, then BPA shall work with Eatonville to resolve such issues.

If BPA determines that any Program Participant's third-party contractor falsified information reported to BPA, then BPA shall have the right to prohibit all Program Participants from reporting, for payment, Measures implemented with the assistance of that contractor. If such action is taken, BPA will notify all Program Participants in accordance with Exhibit A.

(b) **Performance Payments**

For purposes of this Agreement, Performance Payment shall have the meaning as defined in the Implementation Manual.

When BPA notifies Eatonville of its Initial Implementation Budget for the upcoming Rate Period pursuant to section 3(b) above, BPA shall also notify Eatonville of its Performance Payment classification category and rate for the upcoming Rate Period. BPA's Performance Payment classification categories, rates, caps, and certain terms and conditions of Eatonville's receipt of such, shall be as stated in the Implementation Manual.

If Eatonville is seeking BPA payment for Energy Savings, then Town of Eatonville may receive, elect to receive, or opt out of a Performance Payment. Instructions for Eatonville to receive, elect to receive, or opt out of Performance Payments, and the applicable time frame(s) that Eatonville has to claim Performance Payments will be included in the Implementation Manual. If Eatonville opts out of a Performance Payment for a given invoice package submitted using IS2.0, then Eatonville may not claim Performance Payments for that invoice package at a later date. Using BEETS, Eatonville must claim any applicable Performance Payments for any invoice approved by BPA within a given Rate Period by the end of that Rate Period.

BPA shall not apply Performance Payments for any Self-Funded Energy Savings.

BPA will deduct any applicable Performance Payments from Eatonville's Available Implementation Budget.

(c) **BPA Review of Invoice Packages, Creation of Invoice Reports, and Determination of Approved Invoice Payment Amounts**

After BPA receives an invoice package from Eatonville, BPA shall conduct a timely review process to determine

whether: the Measures submitted conform to the requirements of this Agreement and the Implementation Manual, Eatonville has otherwise followed the terms and conditions of this Agreement and the Implementation Manual and Eatonville has adequate Available Implementation Budget.

After BPA has conducted its review process above, which may include an oversight review pursuant to section 7 below, BPA will notify Eatonville of any accepted Measures and, as applicable, BPA will notify Eatonville that it may submit an invoice for accepted Measures. BPA will not accept Measures that are not in compliance with the requirements of this Agreement.

BPA shall create and make available to Eatonville an itemized invoice report that states the accepted Energy Savings and the Approved Invoice Payment Amount.

In no event shall the Approved Invoice Payment Amount exceed Eatonville's Available Implementation Budget."

- (g) The first paragraph of section 6 shall be deleted and replaced by the following:

"BPA agrees to purchase and Eatonville» agrees to sell Energy Savings in accordance with this Agreement. BPA shall pay Eatonville any Approved Invoice Payment Amounts, as determined under sections 5(b), 5(c) and 8 of this Agreement and in accordance with sections 10 and 13 of this Agreement. Such payment shall be due no later than 30 days after BPA accepts the invoiced Energy Savings and makes available the itemized invoice report to Eatonville pursuant to section 5(c) above. All payments to Eatonville will be made electronically."

- (h) The second paragraph of section 7 shall be deleted and replaced with the following:

"During the invoice package review process outlined in section 5(c) above (or where BPA otherwise deems necessary), BPA may select Eatonville's invoice package for oversight review. If BPA selects an invoice submitted by Eatonville to conduct oversight review BPA shall notify Eatonville and the Parties shall coordinate accordingly."

- (i) Section 11(b) shall be deleted and replaced with the following:

"(b) floods, earthquakes, fire, or other natural disasters; terrorist acts; and epidemics, pandemics; and"

- (j) The last sentence of the first paragraph of section 13(a) shall be deleted and replaced with the following:

“Eatonville may not submit invoice packages for implemented Measures after Eatonville has submitted a notice of termination.”

- (k) The last sentence of the second to last paragraph of section 13(b) shall be deleted and replaced with the following:

“Further, Eatonville shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Eatonville for Measures for which Eatonville had not yet submitted an invoice package.”

- (l) The second to last sentence of section 13(c) shall be deleted and replaced with the following:

“Further, Eatonville shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Eatonville for Measures for which Eatonville had not yet submitted an invoice package.”

3. EXHIBIT REVISION

Exhibit A shall be deleted and replaced by the attached Revision No. 02 to Exhibit A.

4. SIGNATURES

This Amendment may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Amendment as of the last date indicated below.

TOWN OF EATONVILLE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name David Baublits
(Print/Type)

Name Jamae Hilliard Creecy
(Print/Type)

Title Mayor

Title Vice President Energy Efficiency

Date _____

Date _____

Revision No. 02, Exhibit A
NOTICES AND CONTACT INFORMATION
Effective on the Date Executed by the Parties

This revision updates the BPA contact information in section 1(b) of Exhibit A.

1. NOTICES AND CONTACT INFORMATION

(a) Notices

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

(b) Contact Information

If to Eatonville:

Town of Eatonville
PO Box 309
Eatonville, WA 98328-0309

Attn: Seth Boettcher
Public Works Director
Phone: 360-832-3361
E-Mail: sboettcher@eatonville-wa.gov

If to BPA:

Bonneville Power Administration
Seattle Customer Service Center
915 Second Ave, Suite 3360
Seattle, WA 98174-3360
Attn: Melissa Podeszwa -PEM-Seattle
Energy Efficiency Representative
Phone: 206-220-6772
E-Mail: mjpodeszwa@bpa.gov

2. REVISIONS

When a Party to this Agreement requests a change to their contact information included in section 1(b) of this exhibit, then the requesting Party must send notice of such requested change to the other Party. BPA may unilaterally revise this exhibit to implement such requested changes to section 1(b). All other revisions to this exhibit shall be by mutual agreement of all the Parties.

Contract No. 17ES-11474

ENERGY CONSERVATION AGREEMENT
executed by
BONNEVILLE POWER ADMINISTRATION
and
TOWN OF EATONVILLE

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Exhibit A Notices and Contact Information

This ENERGY CONSERVATION AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through BONNEVILLE POWER ADMINISTRATION (BPA); and TOWN OF EATONVILLE (Eatonville), a municipal corporation organized under the laws of the State of Washington, hereinafter individually referred to as "Party" or collectively referred to as the "Parties."

RECITALS

BPA is required by the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (Northwest Power Act), to meet the net firm power load requirements of its customers in the Pacific Northwest.

Per the Northwest Power Act and consistent with the Pacific Northwest Electric Power and Conservation Planning Council's regional power plan, BPA pursues Conservation as a resource.

BPA is authorized to acquire cost-effective Conservation to reduce the firm power load requirements of its customers in the Pacific Northwest, and intends to do so by purchasing Energy Savings from Program Participants in accordance with the Energy Conservation Agreement.

Eatonville intends to implement Measures in accordance with the Implementation Manual and to report and sell the resulting Energy Savings to BPA.

This Agreement, including BPA's Energy Efficiency Implementation Manual as may be revised, provides the implementation, reporting, and payment requirements for BPA's portfolio of Energy Efficiency Measures.

The Parties agree as follows:

1. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2021, unless terminated earlier as provided in section 13, Termination. Performance by BPA and Eatonville shall commence on October 1, 2017, with the exception of those actions required prior to that date included in section 3(a) and section 3(b). All obligations under this Agreement shall be preserved until discharged or satisfied.

2. DEFINITIONS

Capitalized terms used in this Agreement shall have the meaning stated.

- (a) "Approved Invoice Payment Amount" means the sum of amounts in an invoice package that BPA determines has met the criteria in section 5(b) and section 5(c) and that BPA authorizes payment of per section 6.
- (b) "Available Implementation Budget" means the amount available for BPA to purchase Energy Savings from a specific Program Participant at a given point in time equal to the Program Participant's Initial Implementation Budget plus any applicable Rollover Amount plus or minus any applicable Implementation Budget Transfers minus any applicable Approved Invoice Payment Amounts.
- (c) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution, as defined in section 3(3) of the Northwest Power Act, and includes actual and planned Conservation.
- (d) "Energy Efficiency Incentive" or "EET" means the aggregate program cost established by BPA for purchasing Energy Savings from all Program Participants within a Rate Period.
- (e) "Energy Savings" means amounts of Conservation that BPA has determined to be attributable to Measures implemented in a manner consistent with this Agreement.

- (f) "Implementation Budget Transfer" means an increase or decrease in a Program Participant's Available Implementation Budget as a result of a method of transferring funds as defined and allowed under this Agreement.
- (g) "Implementation Manual" means the publicly accessible BPA guidance document, as may be revised, that specifies: (1) the Measures that may be implemented by Program Participants, (2) the requirements and specifications for implementation of Measures, and (3) the obligations on BPA and the Program Participants related to the implementation, reporting, payment amounts, oversight, and evaluation of Energy Savings, including Self-Funded Energy Savings.
- (h) "Initial Implementation Budget" means the portion of an EEI established by BPA and effective at the beginning of a Rate Period to purchase Energy Savings from a specific Program Participant during that Rate Period.
- (i) "Measure" means any material, equipment, or activity identified in the Implementation Manual that a Program Participant may install or implement within its service area to achieve Conservation.
- (j) "Program Participant" means a BPA customer that has an Energy Conservation Agreement in effect.
- (k) "Rate Period" shall have the meaning as defined in BPA's Tiered Rate Methodology, as amended.
- (l) "Rollover Amount" means an amount of a Program Participant's budget remaining at the end of a given Rate Period that may carry forward to increase the amount of that Program Participant's Available Implementation Budget for the following Rate Period.
- (m) "Self-Funded Energy Savings" means Energy Savings for which a Program Participant chooses to not seek payment from BPA.

3. IMPLEMENTATION BUDGET

- (a) **Determination of EEI**
By September 30, 2017, and no later than September 30 prior to the start of each Rate Period thereafter, BPA shall determine the EEI for the upcoming Rate Period.
- (b) **Notification of Eatonville's Initial Implementation Budget**
By September 30, 2017, and no later than September 30 prior to the start of each Rate Period thereafter, BPA shall notify Eatonville of its Initial Implementation Budget for the upcoming Rate Period.

Each Rate Period, BPA shall establish Eatonville's Initial Implementation Budget based on Eatonville's Tier One Cost Allocator. For purposes of this

Agreement, the term Tier One Cost Allocator has the meaning as defined in BPA's Tiered Rate Methodology, as may be revised.

(c) **Rollover Amount**

As applicable and in accordance with the terms and conditions in the Implementation Manual, BPA shall calculate Eatonville's Rollover Amount and incorporate a Rollover Amount into Eatonville's Available Implementation Budget for each Rate Period. By November 15, 2017, and no later than November 15 every two years thereafter, BPA shall notify Eatonville of its applicable Rollover Amount for the remainder of the Rate Period.

(d) **Implementation Budget Transfers**

Eatonville may request an increase or decrease to its Available Implementation Budget through an Implementation Budget Transfer in accordance with the Implementation Manual.

If BPA, or the Parties together, establish a new project or program that allows Implementation Budget Transfers to Eatonville's Available Implementation Budget, then the terms and conditions of such project or program will be included in the Implementation Manual or as a new exhibit to this Agreement.

BPA shall provide notice to Eatonville stating the changes to Eatonville's Available Implementation Budget due to any Implementation Budget Transfers.

(e) **Notices and Notifications**

Notices sent under this section 3 shall be sent in accordance with Exhibit A, Notices and Contact Information.

In addition to the notices sent by BPA pursuant to sections 3(b), 3(c) and 3(d) above, Eatonville may request notification of its Available Implementation Budget at any time during the term of this Agreement.

4. **THE IMPLEMENTATION MANUAL**

The Implementation Manual is incorporated by reference and is made a part of this Agreement. BPA may unilaterally modify the Implementation Manual within the general scope of this Agreement and in accordance with the process stated in the Implementation Manual. BPA will provide notice of all modifications to Eatonville in accordance with the process stated in the Implementation Manual.

Eatonville may implement Measures to produce Energy Savings consistent with the Implementation Manual. Unless otherwise agreed, BPA shall use the Implementation Manual in effect on the Measure completion date when conducting its reviews pursuant to section 5(c) below.

5. **INVOICING PROCESS**

(a) **Documentation and Submittal of Invoice Packages**

Eatonville shall comply with the documentation requirements in the Implementation Manual.

Unless the Parties agree otherwise, Eatonville shall execute and maintain a BPA Customer Portal Access and Use Agreement in order to submit invoice packages to BPA.

Whether seeking Self-Funded Energy Savings or for BPA payment for Energy Savings, Eatonville shall submit its invoice packages, including any required reports and documentation, in accordance with the reporting requirements in the Implementation Manual. If there is a disagreement regarding the completeness or accuracy of any submitted documentation, reports, or invoices, as applicable, then BPA shall work with Eatonville to resolve such issues.

If BPA determines that any Program Participant's third-party contractor falsified information reported to BPA, then BPA shall have the right to prohibit all Program Participants from reporting Measures implemented with the assistance of that contractor. If such action is taken, then BPA will notify all Program Participants in accordance with Exhibit A.

(b) **Performance Payments**

For purposes of this Agreement, Performance Payment shall have the meaning as defined in the Implementation Manual.

When BPA notifies Eatonville of its Initial Implementation Budget for the upcoming Rate Period pursuant to section 3(b) above, BPA shall also notify Eatonville of its Performance Payment classification category and rate for the upcoming Rate Period. BPA's Performance Payment classification categories, rates, caps, and certain terms and conditions of Eatonville's receipt of such, shall be as stated in the Implementation Manual.

If Eatonville is seeking BPA payment for Energy Savings, then BPA shall automatically apply a Performance Payment unless Eatonville requests otherwise. Instructions for Eatonville to reduce or opt out of Performance Payments, as applicable, will be included in the Implementation Manual. If Eatonville opts out of a Performance Payment for a given invoice package, then Eatonville may not claim Performance Payments for that invoice package at a later date.

BPA shall not apply Performance Payments for any invoice package or the portion of an invoice package that Eatonville submits for Self-Funded Energy Savings.

BPA will deduct any applicable Performance Payments from Eatonville's Available Implementation Budget.

(c) **BPA Review of Invoice Packages, Creation of Invoice Reports, and Determination of Approved Invoice Payment Amounts**

After BPA receives an invoice package from Eatonville, BPA shall conduct a timely review process to determine whether: (1) the Measures submitted conform to the requirements of the Implementation Manual and this Agreement, (2) Eatonville has otherwise followed the terms and conditions of the Implementation Manual and this Agreement, (3) Eatonville has adequate Available Implementation Budget, and (4) the form of the invoice is proper.

After BPA has conducted its review process above, which may include an oversight review pursuant to section 7 below, then BPA will determine whether it accepts the invoiced Energy Savings. BPA will not accept Measures that are not in compliance with the requirements of this Agreement. BPA shall create and provide to Eatonville an itemized invoice report that states the accepted Energy Savings and the Approved Invoice Payment Amount.

In no event shall the Approved Invoice Payment Amount on an invoice report exceed Eatonville's Available Implementation Budget.

6. **PAYMENT OF APPROVED INVOICE PAYMENT AMOUNTS**

BPA agrees to purchase and Eatonville agrees to sell Energy Savings in accordance with this Agreement. BPA shall pay Eatonville any Approved Invoice Payment Amounts, as determined under sections 5(b), 5(c) and 8 of this Agreement and in accordance with sections 10 and 13 of this Agreement. Such payment shall be due no later than 30 days after BPA accepts the invoiced Energy Savings and provides the itemized invoice report to Eatonville pursuant to section 5(c) above. All payments to Eatonville will be made electronically.

This contract is subject to the provisions of the Prompt Payment Act (31 U.S.C. 3901 *et seq.*) and regulations at 5 C.F.R. Part 1315. If interest penalty payments are determined due under the provisions of the Prompt Payment Act, payment shall be made at the rates determined by the U.S. Treasury under Section 611 of the Contract Disputes Act of 1978 (41 U.S.C. 7109) that is in effect on the day after the due date.

7. **OVERSIGHT REVIEW AND EVALUATION PROCESSES**

In accordance with the oversight review and evaluation processes in the Implementation Manual, BPA shall have the right to conduct: (1) oversight review including, but not limited to, site and record reviews, and (2) impact and process evaluations.

During the invoice package review process in section 5(c) above or otherwise, BPA may select at random any Program Participant invoice to conduct oversight review. If BPA selects an invoice submitted by Eatonville to conduct oversight review, then BPA shall notify Eatonville of such selection and the Parties shall coordinate accordingly.

Oversight review and evaluation processes will be conducted at BPA's discretion.

8. NETTING OF AMOUNTS OWED

BPA will net amounts owed under this Agreement by Eatonville to BPA against any equal or greater amount owed under a pending Approved Invoice Payment Amount by BPA to Eatonville. However, if there is no pending Approved Invoice Payment Amount of equal or greater value, then BPA shall send Eatonville a bill for the amount owed to BPA.

9. INFORMATION EXCHANGE, PRIVACY ACT COMPLIANCE, AND FOIA

Upon request and as allowed by law, the Parties shall provide each other with any information that is reasonable and necessary to verify the achievement of Energy Savings and otherwise administer and implement this Agreement. The Parties shall make best efforts to provide such requested information in a timely manner.

BPA represents that personally identifiable information (PII), including end-user information provided to BPA under this Agreement, is protected by federal law and BPA policy. This protection includes compliance with the requirements of the Privacy Act of 1974 (5 U.S.C. §552a) and DOE Order 206.1.

If BPA subsequently enters into a contract with a third party under which end-user PII provided to BPA by Eatonville will be provided to the third party, then BPA shall include terms contractually obligating such third parties to protect such end-user PII and to only use such PII for purposes of administering and implementing that contract.

BPA may release information provided by Eatonville when required by the Freedom of Information Act (5 U.S.C. § 552) (FOIA), court order, or federal law. Proprietary information of Eatonville, as designated in writing by Eatonville, will only be shared within BPA with individuals who need the information to fulfill a job function.

10. GOVERNING LAW, LIABILITY, AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Eatonville and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers.

BPA and Eatonville assert that neither is the agent or principal for the other; nor are they partners or joint venturers, and BPA and Eatonville agree that they shall not represent to any other party that they act in the capacity of agent or principal for the other.

In no event will either BPA or Eatonville be liable to each other for any special, punitive, exemplary, consequential, incidental or indirect losses/damages from any failure of performance howsoever caused, whether or not arising from a party's sole, joint or concurrent negligence.

The reference to specific products or manufacturers does not represent a BPA endorsement or warranty, and BPA is not liable for any damages that may result from the installation or use of such products.

Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

(a) **Judicial Resolution**

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Eatonville or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section, then Eatonville may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to non-binding arbitration under this section.

(b) **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 10(a) above, shall be subject to arbitration, as set forth below.

- (1) Eatonville may request that BPA engage in binding arbitration to resolve any dispute. If Eatonville requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 10 are met. BPA may request that Eatonville engage in binding arbitration to resolve any dispute. In response to BPA's request, Eatonville may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 10 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

- (2) Non-binding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 10(a) above and is not resolved via binding arbitration, unless Eatonville notifies BPA that it does not wish to proceed with non-binding arbitration.

(c) **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

(d) **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

(e) **Finality**

- (1) In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.
- (2) In non-binding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to non-binding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

(f) **Arbitration Costs**

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

11. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or

negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) strikes or work stoppage;
- (b) floods, earthquakes, or other natural disasters; terrorist acts; and
- (c) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit A, Notices and Contact Information.

12. STANDARD PROVISIONS

(a) **Amendments**

Except where this Agreement explicitly allows one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision to this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Interpretations**

BPA may issue interpretations, determinations, and findings related to this Agreement that are binding on the Parties. Such decisions shall be provided to Eatonville in writing. In administering this Agreement, only the written statements of BPA officials acting within the scope of their authority shall be considered to be official BPA statements.

(c) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's

statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. BPA shall consider any request for assignment, consistent with applicable BPA statutes.

(d) **Entire Agreement**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(e) **Order of Precedence**

In the event of conflict, the body of this Agreement shall prevail over the exhibits of this Agreement. If the terms and conditions of the Implementation Manual conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will take precedence.

(f) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

(g) **Severability**

If any term of this Agreement is found to be invalid by a court of competent jurisdiction, then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.

(h) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

13. **TERMINATION**

All notices sent under this section 13 shall be sent in accordance with Exhibit A, Notices and Contact Information.

(a) **Customer's Right to Terminate**

If Eatonville has no Measures in the process of being implemented and all outstanding invoice packages have been submitted to BPA, then Eatonville may terminate this Agreement upon thirty days' prior written notice to BPA. However, if Eatonville does have Measures in the process of being implemented, then Eatonville must submit any associated invoice packages prior to submitting a notice of termination. Any such termination will take effect upon BPA's payment of the final Approved Invoice Payment Amount.

Eatonville may not submit invoices for implemented Measures after Eatonville has submitted a notice of termination.

If BPA has made any progress payments to Eatonville pursuant to the Implementation Manual and the relevant Measure(s) are yet to be fully implemented, or if Eatonville otherwise owes money to BPA under this Agreement, and Eatonville provides BPA written notice to terminate this Agreement, then the Parties shall work together to develop a mutually agreeable completion and repayment schedule. Eatonville will be required to have Measures under this Agreement completed by September 30 of the Rate Period in which the termination notice is provided to BPA. Termination of this Agreement will not be effective prior to BPA being reimbursed amounts owed or until BPA determines sufficient Measure completion.

(b) BPA's Right to Terminate

BPA may terminate this Agreement upon thirty days' prior written notice to Eatonville if BPA determines that Eatonville:

- (1) has failed to comply with the record-keeping requirements included in the Implementation Manual;
- (2) has failed to use any portion of the Implementation Budget in a manner consistent with this Agreement;
- (3) has posed a significant environmental, health or safety threat;
- (4) has reported falsified information to BPA; or
- (5) has made any other material breach of this Agreement.

Any notice of termination sent by BPA shall include an effective date of such termination.

If BPA terminates this Agreement, then Eatonville's Available Implementation Budget will be zero as of the date of termination. Eatonville will not be allowed a completion period for any Measures Eatonville has in progress beyond the termination date. Further, Eatonville shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Eatonville for Measures for which Eatonville had not yet submitted an invoice.

Termination by BPA under this section 13(b) is without prejudice to any other remedies available to BPA under law.

(c) Termination Upon Termination of Power Sales Agreement

If Eatonville's Power Sales Agreement Contract No. 09PB-13036 is terminated, then this Agreement shall terminate on the same date. If such actions occur, Eatonville's Available Implementation Budget will be zero as of the date of termination. Eatonville will not be allowed a completion period

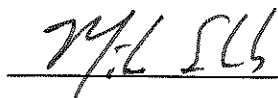
for any Measures Eatonville has in progress beyond the termination date. Further, Eatonville shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Eatonville for Measures for which Eatonville had not yet submitted an invoice. BPA shall also determine if Eatonville is required to provide a refund to BPA, in addition to any refund of progress payments.

14. **SIGNATURES**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and the Agreement may be executed and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

TOWN OF EATONVILLE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By 

By _____

Name Mike Schaub

Title Energy Efficiency Representative

Title: Mayor

Date: 8/12/17

Exhibit A
NOTICES AND CONTACT INFORMATION

1. NOTICES AND CONTACT INFORMATION

(a) Notices

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

(b) Contact Information

If to Eatonville:

Town of Eatonville
201 Center Street West
Eatonville, WA 98328
Attn: Abby Gribi
Town Administrator
Phone: 360-832-3361
E-Mail: agribi@eatonville-wa.gov

If to BPA:

Bonneville Power Administration
909 First Avenue, Suite 380
Seattle, WA 98104
Attn: Dena Hilde – PEK/Seattle
Contracting Officer's Tech. Rep.
Phone: 206-220-6792
E-Mail: DLHilde@bpa.gov

2. REVISIONS

When a Party to this Agreement requests a change to their contact information included in section 1(b) of this exhibit, then the requesting Party must send notice of such requested change to the other Party. BPA may unilaterally revise this exhibit to implement such requested changes to section 1(b). All other revisions to this exhibit shall be by mutual agreement of all the Parties.