

**RESOLUTION 2012-TT**

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE  
THE EXECUTION OF A UTILITY PARTICIPATION AGREEMENT WITH  
PORTLAND ENERGY CONSERVATION, INC.**

**WHEREAS**, the Town of Eatonville receives its power supply from the Bonneville Power Administration (BPA), and

**WHEREAS**, one of BPA's programs for energy incentives is managed by Portland Energy Conservation, Inc. ("PECI"), and PECI is willing to work on the Town's behalf to assist the Town's customers in qualifying for such BPA incentives, and

**WHEREAS**, the Town Council desires to help its local business qualify for energy savings, which will assist the local economy,

**THEREFORE, BE IT RESOLVED** by the Council of the Town of Eatonville as follows:

Section 1. The Mayor is authorized to execute, on behalf of the Town, the attached Utility Participation Agreement with PECI.

Passed by the Council of the Town of Eatonville at a regular meeting this \_\_\_\_\_ day of June, 2012.

\_\_\_\_\_  
Raymond Harper, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Linnemeyer, Interim Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney



## UTILITY PARTICIPATION AGREEMENT

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THIS UTILITY PARTICIPATION AGREEMENT (this "**Agreement**") is dated June 26, 2012 (the "**Effective Date**") between Portland Energy Conservation, Inc., an Oregon nonprofit corporation ("**PECI**") and The Town of Eatonville, a municipal corporation ("**Utility**").

### OVERVIEW

- A. PEGI and the Bonneville Power Administration ("**BPA**") have entered into an agreement dated October 21, 2011 (the "**BPA Agreement**") under which PEGI is implementing and managing the EnergySmart Grocer Program (the "**Program**") throughout various territories in the Northwest on behalf of BPA.
- B. The Program encourages improvements in energy efficiency by evaluating and executing energy saving initiatives. Customers (defined in Section 2 below) that participate in the Program may qualify for incentives funded by Utility. PEGI and Utility are entering into this Agreement so that PEGI may carry out its obligations under the BPA Agreement and Utility can avail itself and its customers to the services offered by PEGI.
- C. By signing this Agreement, Utility affirms and agrees to the terms and conditions contained in this Agreement. As an additional requirement for participation in the Program, Utility must provide PEGI with the Energy Smart Grocer Program Sign-up Form (the "**Form**") provided by BPA to be attached to this Agreement as Exhibit A. Utility affirms and agrees that the information provided by Utility in the Form (including the final incentive budget) is accurate and acknowledges that such information will be relied upon by both PEGI and BPA. Utility will provide PEGI with sixty (60) days' notice prior to changing any funding amounts or program scopes.

### AGREEMENT

1. **TERM.** This Agreement is effective from the Effective Date and will continue until September 30, 2013 renewing automatically for successive two (2) year periods, unless terminated in accordance with the provisions in this Agreement. Prior to the expiration of the preceding Term, Utility will provide PEGI and BPA with an updated Form in the format set forth in Exhibit A.
2. **PROGRAM ELIGIBILITY.** "**Customers**" under the Program means Utility customers that have commercial refrigeration load, including for example, supermarkets, restaurants, institutional kitchens, and other commercial refrigeration sites (each, a "**Facility**").
3. **PECI PROGRAM SERVICES.**
  - a. **Customer Contact.** Utility authorizes PEGI to contact Customers by phone, mail, email or in person for the purpose of informing them about the Program and its processes.
  - b. **Audits.** PEGI will work with Customers to schedule audits of their Facilities (each, an "**Audit**"). Utility may elect to attend an Audit following notice to PEGI. Audits will be



conducted in accordance with Subsection (h) below. PEGI may elect to conduct site assessments in addition to or in lieu of Audits.

- c. **Direct Installs.** PEGI or PEGI's field energy analyst may, with the Customers' approval and in their sole discretion, decide to install some "quick payback" items on their first visit to a Facility. Quick payback installations may include, but are not limited to, beverage merchandise controls or compact fluorescent lamps. The cost of the install will be borne by the Customer and not the Utility.
- d. **Recruiting and Managing Trade Allies.** PEGI may assist Customers in selecting general contractors to perform work under the Program (each, a "Contractor"). PEGI will assist Customers with their selected Contractor by providing training on the Program and support to the Contractor that PEGI deems necessary in its sole discretion. PEGI is not responsible for Contractor conduct and Utility holds PEGI harmless from any third party claims against Contractor (including Customer claims), Contractor misrepresentations, or misconduct occurring in connection with the Program.
- e. **Technical Design Review.** PEGI will obtain a technical design review of a potential measure(s) for a Customer upon Customer's request.
- f. **Determining kWh Savings.** In addition to regionally deemed savings methods, PEGI will use its proprietary modeling software to determine energy savings by measure a Customer installs in a Facility. The energy savings are based on DOE-2 parametric runs and engineering calculations which account for many variables including the Facility's particular climate zone, compressor configuration, condenser type, condenser degradation factors, and hours of operation. PEGI's software estimates are site and climate specific. PEGI will use these savings calculations when submitting savings measurements to Utility. PEGI will also derive prescriptive energy savings for measures that do not require an onsite audit. These measures are not climate or system specific. Lighting savings will be estimated using the BPA Commercial/Industrial Lighting Offer procedures.
- g. **Post Installation Inspections.** PEGI performs post installation inspections through site inspection or verification of documentation controls.
- h. **Service Levels.** PEGI will conduct audits with in accordance with the schedule below based upon committed incentive funds.

**Service Level I (\$50,000 and above in committed incentive funds for FY2012-2013):** Utilities in the Service Level I category will receive a minimum of two (2) field visits annually, audit requests fulfilled within sixty (60) days, and offered deemed and calculated measures. PEGI will provide post installation inspections for all projects with total project costs over \$10,000.

**Service Level II (less than \$50,000 in committed incentive funds for FY2012-2013):** If Utility falls into Service Level II category, PEGI may elect to perform a field visit at its sole discretion. As a standard offering, PEGI will offer deemed Measures only. Audits,



calculated measures, and post installation inspections will be offered on a case by case basis and at Peci's sole discretion. Peci will also offer outreach training for Utility staff (at Utility's request). Utilities in Service Level II will be required to commit a minimum of \$25,000 of incentive funding or be subject to Peci approval for participation in the Program.

- i. **Rebate Processing and Reporting.** Peci will review and approve all Customer rebate applications and invoices for completeness and provide the information necessary to substantiate energy savings and Customer rebate eligibility. For Utilities that elect the BPA Turnkey Option, Peci will submit all rebates applications to BPA for its review and approval. Peci shall not be responsible for any claims rejected by BPA for any reason. For Utilities that elect the Self-funded Turnkey Option, Peci will submit all rebates applications to the Utility for its review and approval. Peci shall not be responsible for any claims rejected by the Utility for any reason. Peci reserves the right to subcontract rebate or check processing and similar functions. The chart below designates the responsible party for each Program component depending on which funding option is elected in the Form.

Program Component	BPA Turnkey Option Responsible Party	Self-funded Turnkey Option Responsible Party
Rebate check issuance	PECI	PECI
Post Installation verification	PECI	PECI
Management of required back-up documentation	PECI	PECI
Review and acceptance of Peci-submitted data to BPA	BPA	Utility
Reimbursement to Peci for incentives paid to Customers	BPA	Utility

- j. **Rebate Payments.** Within ten (10) business days of BPA's or Utility approval of submitted rebates, Peci will mail checks to Customers or Customer designated rebate payees. Checks will be accompanied with a letter including Utility's logo in accordance with Section 5 below, thanking the Customer for their participation in the Program.
- k. **Program Reports.** Peci will provide Utility with limited access to its online portal, Salesforce Sprocket or Sprocket Dashboard, which Utility may use for the sole purpose of viewing completed Audits, dates of any re-visits, rebate activity, rebate savings, to obtain copies of completed audit reports, view pipeline projects and associated kWh savings.
- l. **Targeted Facilities.** Utility would like Peci to target all eligible facilities. More specifically, for Program initiatives around refrigeration Peci will target:



- i. Grocers and national accounts;
  - ii. Convenience stores;
  - iii. Restaurants; and
  - iv. Other commercial refrigeration sites.
4. **ACCEPTANCE.** Utility's acceptance of the terms and conditions set forth in this Agreement is required for participation in the Program. Utility acknowledges that the terms and conditions of the Program are subject to change at Peci's sole discretion.
5. **USE OF UTILITY MARKS.** During the term of this Agreement, Utility grants to Peci a nonexclusive, royalty free right to use its trademarks, service marks, trade names, logos, or similar markings (each a "Mark") subject to the limitations contained in this Agreement. Peci may use the Marks on its website, in its advertising and other promotional activities related to the Program as well as on checks and other mailings to Customers or Contractors. Utility represents and warrants that it owns title to all Marks and agrees to indemnify Peci for any third party claims against Peci for misuse or infringement of the Marks or any claims by any third party pursuant to the exercise of Peci's rights under this Agreement.
6. **TERMINATION.** The parties may terminate this Agreement for cause in the event of any default by the other party following written notice of any default and commercially reasonable opportunity for the defaulting party to cure such default. Peci reserves the right to terminate the Program, this Agreement or any part of this Agreement at the direction of BPA for any reason or for no reason in its sole discretion. In the event of such termination, the Utility shall at the election of Peci: (a) immediately cease participation in the Program, including but not limited to, any applicable use of Program materials, logos or other advertising tools, equipment, and incentive forms; or (b) finalize Program projects in progress at the time of termination as directed by Peci. Peci and BPA will not pay Utility for post-termination activity after receipt of notice of termination unless such Peci elects for Utility to finalize such projects pursuant to Section 6 (b) above.
7. **CONFIDENTIAL INFORMATION.** The parties will not use any Confidential Information for any purpose other than as needed to perform their respective obligations under this Agreement. Each party agrees to hold all Confidential Information in strict confidence and not disclose any Confidential Information to any person other than to its employees and independent contractors who (a) have a "need to know", (b) have been advised of the confidential and proprietary nature of the Confidential Information and (c) have signed a written agreement that is as protective of the Confidential Information as that set forth in this Section. When the parties have fully performed their respective obligations under this Agreement, or at any other time upon request from the party disclosing the Confidential Information, the party in receipt of the Confidential Information will return or destroy all Confidential Information in tangible form that is in their possession. The term "**Confidential Information**" means all information and materials relating to Utility or Peci's business, in whatever form or medium, disclosed to or received by the receiving party, whether visually, by perception, orally or in writing, whether disclosed before or after the Effective Date, and whether or not specifically marked or otherwise identified as "**Confidential**" or "**Proprietary**," including all summaries and notes prepared by or on behalf of the other party, except that "**Confidential Information**" does not include any information that the receiving party demonstrates: (x) has become generally available to the



public without breach of this Agreement; (y) was later received from another person who did not violate any duty of confidentiality; or (z) that was developed without use of any Confidential Information by persons who were not exposed to the Confidential Information.

8. **PROGRAM CHANGES** . Peci reserves the right to make changes to the Program. Peci will notify Utility of such changes by email or another nationally recognized mail carrier.
9. **MISCELLANEOUS.**

**(a) Indemnity.** Utility will indemnify, hold harmless, and defend BPA, Peci and, their respective officers, employees, agents, representatives, and affiliates against any and all losses, liabilities, damages, claims, suits, proceedings, judgments, assessments, costs, and expenses (including interest and penalties), and including reasonable attorney fees and expenses, incurred by BPA and Peci arising from (i) negligent or wrongful acts or omissions of the Utility or of its officers, employees, agents, representatives, or subcontractors, affiliates, or (ii) breach by Utility or its officers, employees, agents, representatives, subcontractors, or affiliates of this Agreement.

PECI shall defend, indemnify and hold harmless Utility, and its respective employees, agents, officers and directors, from and against any losses, liabilities, damages, claims, damages, proceedings, judgments, assessments, costs and expenses (including interest and penalties), and including reasonable attorney fees and expenses arising out of, or resulting from any act or omission of Peci relating to, or arising out of, performance or nonperformance of this Agreement by Peci, except to the extent such act or omission is due to the negligence of Utility or its subcontractors or any other third party.

The parties specifically agree that the provisions of this Section also apply to any claim of injury or damage to the persons or property of the Utility's employees. Utility acknowledges and agrees that, as to such claims, Utility, with respect to Peci waives any right of immunity which Utility may have under any applicable law. This waiver was specifically negotiated by the Parties, is solely for the benefit of the Parties and their successors and assigns, and is not intended as a waiver of Utility's right of immunity under said industrial insurance for any other purpose.

**(b) Attorney's Fees.** In the event an action is brought to enforce any provision of or declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal costs including attorney's fees incurred.



**(c) Notices.** Except as otherwise provided in the Agreement, all notices or other communications under this Agreement must be in writing and delivered to the addresses, including e-mail addresses, below the signatures to this Agreement. Such addresses may be changed by notice given by such party to the other pursuant to this section or by other form of notice agreed to by the parties.

**(d) Assignment.** Neither party may assign, voluntarily, or by operation of law, or otherwise, any rights or delegate any duties under this Agreement without the other Party's prior written consent. Any attempt to do so without that consent will be void.

**(e) Entire Agreement; Counterparts.** This Agreement contains the entire agreement of the parties regarding the subject matter described of the Agreement, and all other promises, representations, understandings, arrangements and prior agreements related to this Agreement are merged and superseded by this Agreement. The provisions of this Agreement may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought. This Agreement may be executed in two (2) or more counterparts, all of which will constitute but one and the same instrument.

**(f) Governing Law; Jurisdiction and Venue.** This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of Washington, without reference to its conflicts of law principles. Utility irrevocably consents to the jurisdiction of the state and federal courts located in the State of Washington, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. The parties consent to disputes being resolved in Pierce County Superior Court located in Washington State. Utility further agrees that it will not initiate any action against P E C I in any other jurisdiction.

**(g) Severability.** Should any provision of this Agreement be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect.

**(h) Waiver of Breach.** The failure of either party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the party under this Agreement, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance.

**(i) Representation on Authority of Signatory.** The individual signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement on behalf of Utility. The Utility represents and warrants that the execution and delivery of this Agreement and Utility's obligations under this Agreement have been duly authorized and that the Agreement is a valid and legal agreement binding on Utility and enforceable in accordance with its terms.

**(j) Disclaimer.** P E C I'S REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF INSTALLATIONS SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY OR RELIABILITY



OF THE INSTALLATIONS. CUSTOMERS AND CONTRACTORS ARE SOLEY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF ALL INSTALLATIONS. PECE SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED REVENUE, PROFITS, OR GOODWILL, WHETHER ARISING IN NEGLIGENCE, BREACH OF CONTRACT, OR UNDER STATUTE OR RULE.

The parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below. This Agreement shall not bind either party until executed by both parties.

PECI

Utility

Portland Energy Conservation, Inc.

Town of Eatonville

By: \_\_\_\_\_

Dana Cofer

Director

By: \_\_\_\_\_

Name: Raymond Harper

Title: Mayor

Notice Address:

100 SW Main St., Suite 1600

Portland, OR 97204

Attention: Dan McDonald

Phone: (503) 575-4179

Email: dmcdonald@peci.org

Notice Address: 210 Center Street West

PO Box 309

Eatonville, WA 98328

E-mail: rharper@eatonville-wa.gov

Work: (360) 832-3361

With a copy to:

100 SW Main St., Suite 1500

Portland, OR 97204

Attention: Joe Mattoon

Phone: (503) 248-4636

Email: jmattoon@peci.org



**EXHIBIT A**  
**Energy Smart Grocer Program Sign-up Form**

## Energy Smart Grocer Program Sign-up Form FY2012-FY2013

Date: \_\_\_\_\_ Is this a revision?  Yes  No

*Email completed form to your EER and COTR. Upon COTR written acknowledgement of your completed form, your information will be forwarded to PECI.*

### 1. Customer Information

Customer: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### 2. Option Election

*Select one option below. Under all options, PECI is responsible for rebate processing and check issuance, post-installation checks as required, management of required back-up documentation and uploading project data to EE Central.*

- BPA Turnkey Option (funded by the Energy Conservation Agreement Implementation Budget)**  
*The COTR will make a reduction to the customer's Energy Conservation Agreement Implementation Budget, Exhibit A, in an amount equal to elected funding. BPA will reimburse PECI for incentives paid to end users in the customer's service territory and will review PECI submissions in EE Central for acceptability.*
- Self-funded Turnkey Option (funded by the customer's own funds)**  
*Customers will use their own funds to reimburse PECI for incentives paid to end users in their service territory and will review PECI submissions in EE Central for acceptability.*
- Combined BPA Turnkey Option and Self-funded Turnkey Option**  
*Customers will initially be enrolled in the BPA Turnkey Option, and when the BPA Turnkey Option funding is depleted, they will be automatically transitioned into the Self-funded Turnkey Option. Customers electing this option must complete funding amounts in section 3 for both the BPA Turnkey Option and the Self-funded Turnkey Option.*

### 3. Funding Amount (FY2012-FY2013)

*Provide the funding amount(s) (below) for the program option selected above. Customers must commit a minimum of \$25,000 or be approved for participation by PECI. Approved customers will receive a service agreement from PECI. Non-approved customers will be notified by BPA, and BPA engineers will help customers deliver deemed refrigeration measures outside the Energy Smart Grocer Program.*

BPA Turnkey Amount (ECA): \$ \_\_\_\_\_

Self-Funded Turnkey Amount: \$ \_\_\_\_\_

Total Funding: \$ \_\_\_\_\_

Total Funding Level	Service Description
\$50,000.00 and above	PECI will (1) perform a minimum of two visits per fiscal year (to contractors and/or end users) in customer's service territory, (2) perform requested audits within 60 days of request, (3) provide deemed and calculated measures and (4) provide inspections for projects with total costs over \$10,000.00.
\$49,999.99 and under	PECI may perform one visit (to a contractor/end user) in customer's service territory and will provide (1) a minimum of one end-user outreach training for customer staff (at customer's request), (2) deemed measures only, and (3) audits, calculated measures and post installation inspections on a case-by-case basis at PECI's discretion.

### 4. Program Scope

*Program scope automatically includes core refrigeration energy efficiency measures, including lighting in refrigerated spaces, in all potential end-user types (e.g., grocery/convenience stores, restaurants, schools, and other commercial refrigeration equipped facilities). Select additional program components by checking the boxes below.*

- Interior and exterior lighting in other areas if a refrigeration project is completed or pursued
- New construction (only in buildings equipped with refrigeration)
- Existing building commissioning (only in buildings equipped with refrigeration)
- HVAC (only in buildings equipped with refrigeration)