

**GRANT AGREEMENT**

**between**

**ENERGY TRUST OF OREGON, INC.**

**and**

**PUBLIC UTILITY COMMISSION OF OREGON**

12/1, 2005

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## AMENDED AND RESTATED GRANT AGREEMENT

This Amended and Restated Grant Agreement ("Agreement"), effective *Dec. 01, 2005* amends and restates that certain Grant Agreement between Energy Trust of Oregon, Inc., an Oregon nonprofit corporation (the "Energy Trust"), and the Public Utility Commission of Oregon, a state agency created by the state of Oregon under ORS 756.014 (the "PUC"), which was effective as of March 1, 2002 (the "Effective Date") and amended, effective March 31, 2003, pursuant to Amendment No. 1 to the Grant Agreement (the "Original Agreement"). To the extent this Agreement is the same as the Original Agreement, it shall be deemed to be a continuation thereof. To the extent this Agreement is different from the Original Agreement, it shall be deemed to be an amendment thereof.

### RECITALS

A. In 1999, the Oregon Legislature adopted, and the governor approved, a comprehensive amendment to Oregon Revised Statute ("ORS") 757.612 (the "Statute") (ORS 757.612(3)). The Statute establishes public-purpose funding to be used for new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources, and new low-income weatherization (ORS 757.612(1)).

B. ORS 757.612(3)(d) authorizes the PUC to direct the manner in which the public-purpose funds authorized under the Statute are collected and spent, and further provides the PUC with authority to direct that funds collected under the Statute be paid to a nongovernmental entity for investment in the public purposes described in Recital A.

C. The Energy Trust has been formed, as a tax-exempt nonprofit corporation, to act as the nongovernmental entity described under subsection (3)(d) of the Statute, to direct the expenditure of funds for new cost-effective local energy conservation, new market transformation efforts, and the above-market costs of new renewable energy resources (the "Statutory Purposes"). The Energy Trust operated on a fiscal year ending September 30 until September 30, 2002. Effective January 1, 2003, the Energy Trust transitioned to a calendar year budget.

D. The Energy Trust and the PUC desire to enter into this Agreement to control the manner in which the Energy Trust will receive and expend funds for the Statutory Purposes in conformity with the requirements and intent of the Statute.

The parties hereby acknowledge the accuracy of the foregoing recitals and agree as follows:

## AGREEMENT

### 1. Obligations of the PUC.

- a. Funding. The PUC will enact such orders and rules as are necessary to ensure that all funds collected under the Statute for the Statutory Purposes (pursuant to ORS 757.612(3)(b)(A) and (B)) during the term of this Agreement (the "Funds") will be paid directly to the Energy Trust not less frequently than monthly, except as may be otherwise provided under ORS 757.612(3)(c) and OAR 860-038-0480(16) as of the Effective Date or pursuant to any net billing arrangements between a utility and the PUC or the Energy Trust. All obligations of the PUC under this Agreement are subject to the PUC's receipt of sufficient legislative appropriations and expenditure authority.
  
- b. Authorized Agent. The PUC will appoint an authorized individual to enter into and oversee implementation of this Agreement. The Energy Trust will not hire any individual who has previously served as the PUC's authorized agent under this Agreement within one year of such person having served in that capacity.
  
- c. Ex Officio Board Member. The PUC will appoint an individual to serve as a nonvoting, ex officio member of the Energy Trust's board of directors.
  
- d. Notice of Legislative Change. The PUC will provide the Energy Trust with prompt written notice of any changes to the Statute or to the Statutory Purposes.

### 2. Obligations of the Energy Trust.

- a. Expenditure of Funds. The Energy Trust will be the exclusive party administering the Funds to accomplish the Statutory Purposes. Funds expended under this Agreement by the Energy Trust will be spent in compliance with the Statute and to accomplish (including reasonable administrative expenses to accomplish) the Statutory Purposes based upon the Statute and Statutory Purposes in existence on the date the Energy Trust receives the Funds. No part of the Funds may be expended by the Energy Trust for lobbying or for any other political purpose, such as endorsing or opposing candidates for public office or ballot measures. Nothing contained herein will be deemed to prevent the Energy Trust from receiving funds from

other sources for activities that are consistent with its purposes, provided such funds are accounted for separately from the Funds.

- b. Administrative Policies and Procedures. The Energy Trust will establish and administer accounting policies and procedures, internal controls, and systems for the development, preparation, and safekeeping of administrative and financial records and books of account relating to its business and financial affairs, all of which will be prepared and maintained in accordance with generally accepted accounting principles.
  
- c. Corporate Operations. During the term of this Agreement, the Energy Trust will: (i) obtain and thereafter preserve its status as a tax-exempt nonprofit corporation, duly organized and validly existing under the laws of the state of Oregon, (ii) maintain the requisite corporate power and authority to carry on its business; and (iii) comply with its articles of incorporation, bylaws, policies, and all applicable laws, regulations, and rules.
  
- d. Phase One Conservation Cost Review. If requested by the PUC, the Energy Trust will assist PUC with its review of Phase One Conservation Costs incurred by the utilities, such review to begin not later than six months after the date the Energy Trust first receives Funds under the Statute. "Phase One Conservation Costs" are defined as conservation costs that were committed prior to initiation of subsection (3) of the Statute but are to be incurred after the date the Energy Trust first receives Funds under the Statute. The parties agree that the Phase One Conservation Costs may be used to offset Funds that would otherwise be paid to the Energy Trust under this Agreement.
  - i. The Energy Trust and PUC will determine the scope of the assistance to be rendered in assessing the costs and effectiveness of the Phase One Conservation Costs incurred by the utilities to complete conservation measures and will develop mutually agreeable criteria and procedures to carry out this review.
  
  - ii. The final product will be written reports prepared by the Energy Trust and presented to the PUC and will include comments by the utilities.
  
- e. Performance Measures. The Energy Trust and the PUC recognize the need for having valid and quantifiable performance measures that clearly define the PUC's expectation of the Energy Trust's performance. The performance measures are developed to clarify minimum expectations for Energy Trust on an ongoing basis and may be adjusted from time-to-time. The Energy Trust

will regularly report to the PUC, comparing actual performance to the PUC established performance measures. Should the Energy Trust fail to meet the performance measures adopted by the PUC, the PUC, at its discretion, may issue a Notice of Concern. In choosing to issue such a Notice of Concern, the PUC will take into account reasonable causal factors and any mitigating action taken by the Energy Trust.

### **3. Accountability and Oversight.**

#### **a. Reporting.**

i. Strategic Plan. Not later than the Effective Date, the Energy Trust's board of directors will have approved an interim strategic plan for expenditure of the funds to accomplish the Statutory Purposes and provided a copy to the PUC. Not later than one year after the Effective Date, the Energy Trust will publish a final strategic plan that clearly describes its mission, the goals it seeks to accomplish, and programmatic and organizational strategies it intends to employ. In addition, the Energy Trust will regularly provide a two-year action plan that describes specific actions the Energy Trust will pursue to accomplish its strategic plan. The first such action plan, covering the period March 1, 2002, through September 30, 2003, will be provided to the PUC not later than March 1, 2002. After initial publication of the final strategic plan, the strategic plan will be revised at least once every five years. The action plan will be revised annually in conjunction with the approved annual calendar year budget. The Energy Trust will actively seek public and PUC comment before finalizing and publishing any such strategic or action plans.

ii. Budget. The Energy Trust will develop an annual calendar year budget and provide the PUC with an initial draft thereof on or before November 15 of each year and a final budget, approved by the Energy Trust's board of directors, on or before December 31 of each year.. The budget will include projected revenues to be received under this Agreement, other revenues to be received, and describe proposed expenditures in such manner as may be requested by the PUC. The budget will also contain information that may permit the reader to evaluate the Energy Trust's total administrative costs and whether such costs may be considered reasonable, and provide a comparison of actual revenues and expenditures received through the first three full quarters and an estimation of projected expenditure for the remaining fourth quarter of the current year, as compared to the current year's budget. For the calendar year ending December 31, 2003, the Energy Trust will provide the PUC with detailed information comparing its budgeted to actual expenditures on a quarterly basis. Such quarterly reports will be due not later than 45 days after the end of each calendar quarter.

iii. Annual Report. On or before April 15 of each year, the Energy Trust will provide the PUC with an annual report for the prior calendar year, which will include:



(A) Financial Statements for the most recently completed calendar year, prepared according to generally accepted accounting principles uniformly applied, which have been audited by an outside independent certified public accountant. The Financial Statements will contain information that will permit the reader to evaluate the Energy Trust's total administrative costs and whether such costs may be considered reasonable, and will account for conservation and renewable resource expenditures separately for each service area from which the Funds were collected (the "Service Area(s)").

(B) A list of the Energy Trust's then acting board of directors, including biographies, and the Energy Trust's current board development guidelines.

(C) A roster of the then acting members of the Energy Trust's Conservation and Renewable Resources Advisory Councils and a summary of such councils' activities during the previous calendar year.

(D) Summaries of program accomplishments directed at achieving the strategic and action plans, including specific information concerning energy savings, renewable resource projects, and other measurable outcomes. Such summaries will include a section that compares strategic goals to actual outcomes achieved, measured by ongoing program evaluation activities. The report will also contain information and descriptions of conservation programs (reported by sector and Service Area), renewable energy resource programs (reported by program, specific resource, and Service Area), public education campaigns, and pilot and demonstration projects.

(E) A description of any changes to the Energy Trust's strategic or action plans since the previous annual report.

(F) A description of how the Energy Trust strives to make its decisions in open forums.

iv. Tax Reports. Annually, not later than 15 days after such reports have been filed with the proper authorities, the Energy Trust will provide the PUC with copies of Internal Revenue Service Form 990 (including any related Form 990 filings, such as Forms 990T, 990PF etc.) and Oregon Department of Justice Form CT12.

v. Governance Documents. The PUC acknowledges having received the Energy Trust's current articles of incorporation, bylaws, and policies. The Energy Trust represents that such documents are currently in effect and that there have been no changes.

vi. Advance Notice of Long Term Contracts. In the event the Energy Trust desires to enter into any third party contract for the expenditure of Funds which exceeds two years in duration and is not terminable by the Energy Trust concurrently with the termination of this Agreement, the Energy Trust will provide the PUC with 45 days advance written notice. Such notice will provide, at a minimum, the name of the third party, the expected term of the contract, the expected amount to be paid under the contract, how the Energy Trust will ensure sufficient funds to meet obligations under the contract in the event of termination of this Agreement prior to termination of the contract, and a specific explanation of why it is not possible to make the contract terminable by the Energy Trust concurrently with the termination of this Agreement. If within 45 days the PUC objects to funding the contract, the Energy Trust shall not enter into such obligation.

b. Notice of Changes. The Energy Trust will promptly notify the PUC in writing of:

i. Any changes to, corrections to, or errors in any of the information contained in the items referred to in Section 3(a) that have previously been provided to the PUC. This includes such additional information or clarification as may reasonably be required to make the original information not misleading. The Energy Trust will promptly provide the PUC with a copy of revised documents incorporating any such changes, regardless of whether such changes are implemented by the Energy Trust or by third parties (such as by audit).

ii. Any proposed sale of assets of the Energy Trust which is not in the ordinary course of business, or of any proposed corporate dissolution, liquidation, merger or acquisition of the Energy Trust.

c. Requests for Additional Information. The Energy Trust will promptly respond to written requests for additional information received from the PUC. If the Energy Trust receives such a written request calling for information that the Energy Trust reasonably believes to be confidential ("Confidential Information"), the Energy Trust will promptly inform the PUC of the nature of such confidentiality in a written response to the request, and the procedures described below will be followed. In all events, the Energy Trust will either transmit the information requested, advise the PUC when such information will be available (and why it is not presently available), or advise the PUC of the nature of its confidentiality concern as soon as reasonably possible, and in no event later than within ten business days after receiving

the PUC's request for additional information. The PUC or its authorized representative will also have the right, upon demand, to inspect the books, accounts, and financial records of the Energy Trust. No provision of this Agreement will be interpreted as otherwise preventing the Energy Trust from transmitting additional information to the PUC concerning its affairs at any time during the term of this Agreement. All of the above rights of the PUC will be subject to the following:

i. If the PUC has requested information that the Energy Trust reasonably believes is Confidential Information and protected from public disclosure as being exempt under the Public Records Law (ORS 192.001 et seq.) or similar law, the Energy Trust will promptly transmit the information to the PUC (or permit inspection) and advise the PUC in writing that it considers the information Confidential Information and exempt from public disclosure under one or more specific exemptions described in the Public Records Law or similar law.

ii. If the PUC has requested information that the Energy Trust reasonably believes is Confidential Information and not protected from public disclosure as being exempt under the Public Records Law or similar law, the Energy Trust will not be obligated to transmit such information to the PUC or to permit inspection.

iii. The Energy Trust may, at any time, advise the PUC that it reasonably believes that any part of the information transmitted to the PUC under Section 3(a) or (b) is Confidential Information, and the PUC will thereafter be required to protect the confidential nature of such information according to subsection iv, which follows. Notwithstanding anything contained herein to the contrary, the Energy Trust will not claim that any part of the annual report described in Section 3(a)(iii) is Confidential Information.

iv. In all events, the PUC will make its best good faith efforts to maintain the confidentiality of all properly identified Confidential Information by taking all reasonable steps, including but not limited to: (A) limiting disclosure of the Confidential Information to PUC employees and agents having a need to know the Confidential Information; (B) not disclosing the Confidential Information to any third party; and (C) using the Confidential Information solely and exclusively to carry out its obligations and exercise its rights under this Agreement and the Statute. In addition, the PUC will promptly provide written notice to the Energy Trust of any unauthorized use or disclosure of the Confidential Information, and will cooperate with and assist the Energy Trust in every reasonable way to stop or minimize such unauthorized use or disclosure. Notwithstanding the forgoing or any other provision of this Agreement to the contrary, the parties understand that the PUC is a government entity subject to disclosure requirements under the Public Records Law and other laws. Therefore, disclosure of information by the PUC on the advice of its legal counsel or pursuant to an order of the Oregon Attorney General or a court of competent jurisdiction under the Public Records Law or other

laws will not be considered a breach of this Agreement, provided the PUC has given the Energy Trust prompt written notice of any effort or attempt by third parties to obtain or require disclosure of such Confidential Information and not less than seven days to submit written objections to the PUC concerning such disclosure. Nothing contained in this Section 3(c)(iv) will be deemed to otherwise restrict the Energy Trust from pursuing other opportunities to dispute such disclosure under applicable law.

v. The Energy Trust will make all information that has been transmitted to the PUC, other than Confidential Information, available to the public at the same time such information is transmitted to the PUC by posting the information itself, or a reference thereto (including document title and date), to its website, and by promptly responding to requests for such information when made by the public. The Energy Trust may require a reasonable charge for the cost of duplicating and mailing such information. The Energy Trust is not required to respond to specific requests for information if it reasonably determines that such requests are part of a harassment campaign and that compliance with such requests does not serve the public interest.

d. Management Review and Evaluation. The Energy Trust will contract for an independent management review and evaluation not less frequently than every five years (the "Management Review"). The first such Management Review will be completed not later than three years after the Effective Date. The Management Review will be designed to review the efficiency and effectiveness of Energy Trust operations under this Agreement and make specific suggestions for improvement.

i. The Management Review will review the administrative and operational costs of the Energy Trust and provide recommendations to improve efficiency and effectiveness. The Management Review will include an analysis of cost allocations between administration, management, and programs and offer suggestions for appropriate changes.

ii. The Management Review will review programs operated by the Energy Trust and compare them to similar or related programs operating elsewhere. The Management Review will offer suggestions for improvement.

iii. A copy of the completed Management Review will be provided to the PUC, accompanied by the Energy Trust's response to suggestions made.

e. Notice of Concern. Should either party to this Agreement have concerns relating to the other party's conduct, whether such conduct is related to the terms of this Agreement or not, that party (the "Initiating Party") will provide

the other (the "Responding Party") with written notice of such concerns, which notice will reasonably specify the conduct in question and the nature and extent of such concerns (the "Notice of Concern").

i. Each Notice of Concern will specify that it is a "Formal Notice of Concern" by having such words prominently displayed within the Notice of Concern and by specific reference to this Section 3(e)(i). Each Notice of Concern will describe with reasonable particularity the Initiating Party's expected negative impact from the concern and the remedies it believes necessary to be implemented to resolve the concern to its satisfaction.

ii. As soon as possible, but in no event later than 30 days after receipt of the Notice of Concern, the Responding Party will provide a written response to the Initiating Party describing its recommendation(s) for a resolution that may be satisfactory to both parties (the "Response"). The Response will describe with reasonable particularity the Responding Party's anticipated timeline for implementing the resolution, which timeline will, whenever possible, be less than 90 days from the date of the Response. If it is impossible for a resolution to be achieved within the 90-day period, then the Response will specify what actions will be implemented within the 90-day period, what actions will be completed outside of the 90-day period, and the specific reasons why timely resolution is not otherwise possible.

iii. The parties agree that if a Notice of Concern is initiated under this Section 3(e), they will cooperate in good faith to resolve such concerns to the best of their abilities.

(A) Accordingly, not later than ten days after receiving the Response, the Initiating Party will advise the Responding Party in writing whether the proposed Response is acceptable. Thereafter, the Initiating Party will promptly (and in no event later than ten days after receiving further written proposals from the Responding Party) advise the Responding Party in writing whether such further proposals, including mediation results, are acceptable resolutions. In the event the Initiating Party fails to respond within the previously described ten day periods, then this Notice of Concern process will be stayed until the Initiating Party does respond and will automatically terminate in the event more than 30 days pass from the date of the Response without the Initiating Party advising the Responding Party in writing whether the proposed Response is acceptable. In the event this Notice of Concern process expires due to the failure of the Initiating Party to timely respond to a Response, the Initiating Party may begin the process anew by subsequently providing a new Notice of Concern in conformity with Section 3(e)(i).

(B) In the event the Initiating Party believes a proposed action by the Responding Party is acceptable to resolve its Notice of Concern, and the Initiating Party so advises the Responding Party in writing, this Notice of Concern process under Section 3(e) will

end and the Agreement will remain in full force and effect, so long as the Responding Party diligently pursues the proposed action to its conclusion.

(C) To further aid the parties in achieving resolution, at any time after the date on which the Response is due, but not later than 90 days thereafter, either party may request mediation to assist with resolution. Notwithstanding the previous sentence, the Responding Party may not request mediation unless it has provided a timely Response to the Notice of Concern, as required under Section 3(e)(ii) above. During any period for which a Notice of Concern initiated by the PUC has not been resolved, the Energy Trust will not enter into any new binding contracts for expenditure of any of the Funds that are directly related to the outstanding, unresolved Notice of Concern(s) unless such contracts can be terminated by the Energy Trust concurrently with termination of this Agreement.

iv. If a party requests mediation under Section 3(e)(iii)(C), the mediation, if any, will be administered according to the process described in Section 6(s) and the timelines otherwise required under this Section 3(e) will be stayed until such mediation is completed. The results of any mediation under this Section 3(e)(iv) will not be binding upon the parties and, if a result acceptable to the parties has not been achieved at the conclusion of such mediation the timelines otherwise required under this Section 3(e) will resume until the matter of concern is resolved or this Agreement is terminated, under the procedures described below.

v. If the Initiating Party has not, in its sole discretion, had the matter(s) of concern satisfactorily addressed by the Responding Party on or before the date that is 60 days after the Responding Party's initial receipt of the Notice of Concern, or if the Responding Party has not timely provided a Response, the Initiating Party may proceed to terminate this Agreement under the procedures described in Section 4(b)(ii) below.

vi. If the Initiating Party has received a satisfactory Response from the Responding Party, but such resolution has not been completed in a manner consistent with that detailed in the Response, or the Initiating Party reasonably believes the resolution will not be completed in a manner consistent with that detailed in the Response, the Initiating Party may proceed to terminate this Agreement under the procedures described in Section 4(b)(i) below, as a breach of this Agreement.

#### **4. Term.**

- a. Term. Subject to the automatic extension provision set forth below, this Agreement will be for a term of three years from the Effective Date. Unless written notice that a party does not wish to automatically extend the term of this Agreement is provided to the other party on or before the date that is

90 days prior to each anniversary of the Effective Date, the parties agree that the term of this Agreement will be automatically extended for one additional year on each anniversary of the Effective Date. The provisions of this Section 4(a) are subject to the termination provisions of Sections 4(b) and (c), below.

b. Early Termination.

i. In the event of a breach of this Agreement, the non-breaching party may provide the breaching party with written notice of termination of the Agreement. The notice will describe the nature of the breach with reasonable particularity.

(A) If the breach has not been cured by the breaching party within 60 days after receipt of the written notice; or, if it is not reasonably possible to cure the breach within such 60 day period, the breaching party has not initiated and diligently pursued a cure within 60 days after receipt of the written notice; then this Agreement will automatically terminate at the end of the 60 day period.

(B) If the breach has been cured by the breaching party within the 60 day period, or if the breaching party has initiated and diligently pursued a cure within the 60 day period and continues to pursue the cure until its successful completion, then the initial notice of termination provided under this Section 4(b)(i) will no longer be of any force or effect and this Agreement will remain in full force and effect.

ii. If a party has initiated a Notice of Concern under the procedures described in Section 3(e) and (A) a Response has not been timely received, as required under Section 3(e)(ii); or (B) the items of concern have not been resolved to the Initiating Party's satisfaction within the periods described in Section 3(e)(v); then the Initiating Party may terminate this Agreement by providing the other with 60 days' prior written notice.

iii. In the event of any termination under this Section 4(b):

(A) Upon receipt of a written notice of termination initiated by the PUC under this Section 4(b), the Energy Trust will immediately cease entering into any new binding contracts for expenditure of any of the Funds, unless such contracts automatically terminate concurrently with termination of this Agreement.

(B) As of the date of termination, expenditures that have been proposed by the Energy Trust in budgets or in other reports or notices that have previously been submitted to the PUC under Section 3, for which the Energy Trust has entered into Complying

Contracts (as that term is defined in Section 5(c)(iv), below) that cannot be terminated by the Energy Trust concurrently with the termination of this Agreement, will continue to be funded during the Termination Period (as defined in Section 4(b)(iii)(c), below) to enable the Energy Trust to meet its legal commitments under such contracts, or, at the request of the PUC, all of the Energy Trust's rights under such contracts will be assigned to a third party, to the extent permitted under the terms of such contracts. For any Complying Contracts that are not assigned, continued funding by the PUC will include the reasonable costs of the Energy Trust's continuing administration of such contracts and other appropriate matters during the Termination Period, as defined in Section 4(b)(iii)(C), below;

(C) As of the date of termination, Funds that have previously been provided to the Energy Trust under this Agreement that remain in the Energy Trust's possession and for which the Energy Trust has either entered into Non-Complying Contracts (as that term is defined in Section 5(c)(iv), below), or for which the Energy Trust has not yet entered into binding contracts, will be considered advances that have been provided to the Energy Trust "in trust" on behalf of the PUC, and such Funds, less the sum of the reasonable costs of the Energy Trust's continuing administration during the Termination Period and any amounts due the Energy Trust under Section 4(b)(iii)(B), above, will be distributed as directed by the PUC as soon as practicable; and

(D) Upon the issuance or receipt of a written notice of termination under this Section 4(b), the Energy Trust will immediately begin the orderly process of winding down its activities under this Agreement, with the objective of terminating all activities to be funded under the terms of this Agreement as soon as reasonably possible. The period between the end of the initial 60-day notice required above and the cessation of all such activities by the Energy Trust under this Agreement is the "Termination Period." During the Termination Period, the terms of this Agreement will remain in full force and effect except for such terms as are inconsistent with such termination. The Termination Period will continue for no longer than two years after the date of any termination; provided, however, that the Termination Period, with respect to a Complying Contract that cannot be terminated on or prior to the 2<sup>nd</sup> anniversary of the termination of this Agreement, shall extend to the earliest date that the Complying Contract can be terminated.

(E) In the event of termination of this Agreement for any reason, the Energy Trust agrees to repay to the PUC on demand any Funds that have been expended by it in contravention of the requirements of Section 2(a), above.

(F) The amount of funding that the PUC is required to provide to the Energy Trust under Sections 4(b)(iii)(B) and (C) during the Termination Period will not exceed the Funds that the Energy Trust would have received pursuant to this Agreement during that period had this Agreement not terminated.



- c. Automatic Termination. This Agreement will be automatically deemed to have been terminated as of the effective date of any of the following circumstances:

i. Dissolution of the Energy Trust.

ii. Appointment of a receiver, trustee, liquidator, or conservator for the Energy Trust or to take possession of all or substantially all of the Energy Trust's property; or the filing of a petition for bankruptcy, insolvency, dissolution, liquidation, or reorganization, or order for relief in which the Energy Trust is named as debtor, by, against, or with respect to the Energy Trust pursuant to any federal or state statute, regulation, or law for the protection of debtors; and, with respect to any such appointment or filing, failure of the Energy Trust to secure a stay or discharge thereof within 45 days after such appointment or filing.

iii. Mutual agreement by the Energy Trust and PUC to terminate this Agreement in a writing signed by the authorized representatives of both parties.

iv. The end of the term, including any extensions thereof, as described in Section 4(a), above.

v. If this Agreement is automatically terminated under this Section 4(c), the terms of Section 4(b) will govern, except that no 60-day notice need be provided by either party, all actions that are to occur or commence on the date of issuance or receipt of a 60-day written notice of termination will occur or commence on the date of termination under this Section 4(c), and the Termination Period will begin on the date of termination under this Section 4(c).

## 5. Guidelines.

The parties have agreed that the following terms will not constitute binding terms under this Agreement, but will be considered operational guidelines, to be applied in good faith by the parties to their dealings under this Agreement whenever reasonably possible.

- a. Competitive Markets. The parties will seek to encourage development of competitive markets for energy efficiency services and renewable resources as long-term outcomes.

b. Competitive Bids. When deemed appropriate, the Energy Trust will employ a nondiscriminatory competitive solicitation process prior to entering into binding agreements for expenditure of Funds.

c. Third Party Contracts.

i. Contracts between the Energy Trust and third parties for expenditure of Funds which exceed two years in duration will contain a provision permitting the Energy Trust to terminate the contract (subject only to reasonable advance notice requirements) concurrently with the termination of this Agreement unless the Energy Trust has provided advance notice of the contract to the PUC in accordance with Section 3(a)(vi) and the PUC has not objected to the contract as provided for in Section 3(a)(vi).

ii. Contracts between the Energy Trust and third parties for expenditure of Funds will contain confidentiality provisions which coincide with the confidentiality provisions contained in this Agreement.

iii. Contracts between the Energy Trust and third parties for expenditure of funds which exceed two years in duration will contain a provision permitting the Energy Trust to assign its interest in the contract to a third party in conformity with the requirement contained in Section 4(b)(iii)(B).

iv. Contracts between the Energy Trust and third parties for expenditure of Funds which: (A) exceed two years in duration and comply with the requirements of Section 5(c)(i); or (B) are two years or less in duration; will be collectively regarded as "Complying Contracts" under the terms of this Agreement. All other contracts between the Energy Trust and third parties will be regarded as "Non-Complying Contracts" under the terms of this Agreement.

d. Use of Funds. Funds expended for new renewable resources will be utilized to offset all or a portion of their above-market costs to provide short- and long-term benefits to users of electricity in the Service Areas.

e. Conservation. Individual conservation programs will be designed to be cost-effective and will be independently evaluated on a regular basis. This guideline should not, however, restrict investment in pilot projects, educational programs, demonstrations, or similar endeavors.

- f. Year of Utilization. A majority of the Funds expended for conservation will be spent or committed in the calendar year in which the Funds are received.
- g. Benefits. After consideration of the sources of public purpose funding, all classes of electricity users and their related geographic areas should benefit from conservation and renewable program expenditures.
- h. Coordination. Each program will be designed to recognize and coordinate with existing local, state, and regional programs that are related in purpose.
- i. Administrative Costs. The costs of operating the Energy Trust will be reasonable and support efforts toward cost effectiveness. Costs of operating the Energy Trust will balance the lowest possible administrative costs with overall organizational effectiveness. Subject to generally accepted accounting principles, the Energy Trust will allocate administrative costs in a manner to avoid cross-subsidies between programs that are supported by the Funds and programs that are not.
- j. Standards of Conduct. The Energy Trust will operate under professional standards of conduct and organizational effectiveness, consistent with the public interest and mandates of the Statute.
- k. Board Development. The Energy Trust will create board development guidelines designed to ensure that the board of directors of the Energy Trust has the skills and demographics to be effective and that it has the diversity necessary to support its mission. The board of directors will be as broadly representative of electrical users in the Service Areas as possible. Members of the board of directors will avoid direct financial conflicts of interest with the activities of the Energy Trust.
- l. Input. The Energy Trust will seek comment from the PUC and from the public on issues related to its performance of services under this Agreement.

## 6. Miscellaneous Provisions.

- a. Definitions. For purposes of this Agreement, the terms "above-market costs of new renewable energy resources," "local energy conservation," "market transformation," "new," "new renewable energy resource," and "renewable

energy resource" have the meanings given them under Oregon Administrative Rule ("OAR") 860-038-0005, as in effect on the Effective Date. The term "conservation" has the meaning given it under OAR 860-027-0310(1), as in effect on the Effective Date. All capitalized terms have the meanings given to them by this Agreement.

- b. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.
  
- c. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement will be assigned by any party without the prior written consent of the other party, except that the Oregon Legislative Assembly may assign the rights and obligations of the PUC under this Agreement to any other agency or instrumentality of the State of Oregon.
  
- d. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or will be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
  
- e. Notices. All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties to the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

To: Energy Trust of Oregon, Inc.  
Address: 851 S.W. Sixth Avenue, Suite 1200  
Portland, Oregon 97204

Attention: Executive Director

Facsimile No.: (503) 546-6864

With a copy to: John M. Volkman  
Energy Trust of Oregon  
851 S.W. Sixth Avenue, Suite 1200  
Portland, Oregon 97204

Facsimile No.: 503 546-6864

To: Public Utility Commission of Oregon  
Address: 550 Capitol, N.E.  
Salem, Oregon 97301

Attention: Mr. Rick Willis

Facsimile No.: 503 378-6163

With a copy to: Mr. Paul A. Graham  
Department of Justice  
1162 Court Street, NE  
Salem, Oregon 97310

Facsimile No.: 503 378-5300

Any notice or other communication will be deemed to have been received (i) on the date of personal delivery, (ii) at the expiration of five days after the date of deposit in the United States mail, postage prepaid, or (iii) on the date of confirmed delivery by facsimile or overnight delivery service.

- f. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must specifically refer to this Agreement.
- g. Legislative, Regulatory or Administrative Changes. If there is (i) (A) any change in any state statute, law, regulation, rule, order, legislation, policy, or general instruction that has the effect of law, or (B) any ruling, order, judgment, decree, or interpretation by any court, agency, or other governing body having jurisdiction over either party (in any such case, for purposes of this Section 6(g), a "Regulatory Matter"), and (ii) such Regulatory Matter adversely affects, or is reasonably likely to adversely affect, the manner in which either party is to perform under this Agreement, or makes this Agreement unlawful, the parties will immediately use their best good faith efforts to enter into an amendment of this Agreement that complies with such Regulatory Matter and approximates as closely as possible the relative positions of the parties prior to issuance of such Regulatory Matter. If the parties are unable to reach a new agreement within a reasonable time following the date on which it becomes reasonably certain that such Regulatory Matter will arise, the parties may submit the issue to arbitration under Section 6(t). If arbitration is selected and the arbitrator determines that no amendment will comply with the Regulatory Matter, the arbitrator has the

express authority to determine that this Agreement should be terminated under the terms of Section 4(b). Nothing contained in this Agreement will be deemed to limit or restrict the authority of the Oregon Legislative Assembly to amend or repeal the Statute or to require the PUC to act inconsistently with future legislative changes.

- h. Relationship of Parties. The parties acknowledge that the Energy Trust is an independent contractor and that nothing in this Agreement is intended, and nothing will be construed, to create any form of partnership or joint venture relationship between the parties, or to allow either to exercise control or direction over the other, provided always that the services to be provided hereunder by the Energy Trust will be furnished in a manner consistent with the terms of this Agreement.
- i. Further Actions. Each party will execute, acknowledge or verify, and deliver any and all documents and take any and all other actions that from time to time may be reasonably requested by the other to carry out the purposes and intent of this Agreement.
- j. Construction. The captions used in this Agreement are provided for convenience only and do not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the section or sections of this Agreement. All words used in this Agreement are to be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
- k. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same Agreement.
- l. Facsimile Signatures. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.
- m. Further Assurances. Each party agrees (i) to execute and deliver such other documents and (ii) to do and perform such other acts and things as the other

party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.

- n. Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
- o. Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear the party's own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.
- p. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not constitute a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- q. Indemnification. The Energy Trust will indemnify and, subject to ORS Chapter 180, defend the PUC and its commissioners, employees, agents, representatives, and affiliates (the "Indemnified Parties") and hold them harmless from and against any and all losses, liabilities, damages, demands, claims, suits, actions, judgments, assessments, costs, and expenses, including without limitation interest, penalties, attorney fees, any and all expenses incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation asserted against, imposed on, or incurred or suffered by any of them, directly or indirectly, as a result of or arising from the acts or omissions of the Energy Trust or its directors, employees, contractors, or other agents or representatives. Notwithstanding anything contained in this Agreement to the contrary:
  - i. The Energy Trust will not be deemed liable or to be in default for any delay or failure in performance under this Agreement or other interruption deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by its employees, or any other similar cause beyond its reasonable control unless such delay or failure in performance is expressly addressed elsewhere in this Agreement; and
  - ii. The PUC will be entitled to indemnification hereunder only in the event of an allegation that the Indemnified Parties, or any of them, are vicariously liable for the

acts or omissions of the Energy Trust or its directors, employees, contractors, or other agents or representatives.

- r. Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.
  
- s. Mediation. In the event of any dispute, controversy, or claim between the parties arising out of or relating to this Agreement, the parties agree to attempt to first resolve the matter through good faith negotiation. In the event the parties cannot settle the matter through negotiation, the parties agree to consider non-binding mediation of the dispute or claim through an independent, trained mediator. Either party may request mediation at any time. Any mediation to be conducted under this Agreement will be administered by Arbitration Service of Portland in accordance with its then applicable rules. The party requesting mediation will request Arbitration Service of Portland to: (A) appoint a single mediator who is a retired judge in the state of Oregon; and (B) require the mediator to provide written findings of fact and a statement of reason for the outcome of the mediation. The cost of any such mediation will be shared by the parties, except that each party will pay the cost of its own representation in such mediation. Any such mediation is to be conducted in Salem, Oregon.
  
- t. Arbitration. In the event that any dispute, controversy, or claim between the parties arising out of or relating to this Agreement cannot be settled by negotiation or mediation, the parties agree to consider having the dispute, controversy, or claim settled by binding arbitration. Unless the parties otherwise agree, such arbitration will be administered by Arbitration Service of Portland. Judgment on the award rendered by the arbitrator may be entered in the circuit court in the county in which the arbitration occurs, and the resolution of the disputed matter as determined by the arbitrator will be binding on the parties. There will be one arbitrator, who is to be a retired federal or state judge with a minimum of ten years' judicial experience or who has such alternate qualifications as are mutually agreeable to the parties. The arbitrator may, by mutual agreement of the parties, be the same party who conducted mediation for the parties. Any arbitration is to be conducted in Salem, Oregon, in accordance with the following provisions:
  - i. Except as otherwise provided in this Section 6(t), arbitration proceedings will be conducted in accordance with the rules of Arbitration Service of Portland.



ii. Arbitration proceedings under this Agreement may be consolidated with other arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.

iii. A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration (or pending the arbitrator's determination of the merits of the dispute, controversy, or claim).

iv. The arbitrator will have authority to issue preliminary and other equitable relief.

v. Discovery proceedings of the type provided by the Oregon Rules of Civil Procedure will be permitted both in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery will be resolved by the arbitrator.

vi. The arbitrator will have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.

vii. The arbitrator will have the authority to award any remedy or relief that an Oregon court could order or grant, including without limitation specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator will not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or loss incurred.

viii. The award will be in writing, be signed by the arbitrator, and include a statement regarding the disposition of any claim. The award will be treated as Confidential Information.

u. Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other party will also be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

- v. Venue. Any judicial action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement is to be brought against any of the parties in Marion County Circuit Court of the State of Oregon and each of the parties consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.
  
- w. Exhibits. Any exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.
  
- x. Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
  
- y. Survival. In addition to other provisions of this Agreement that survive in accordance with their terms, the parties agree that the provisions of Sections 4(b)(iii), 6(q), and this Section 6(y) will survive termination of this Agreement.
  
- z. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.
  
- aa. Authorized Parties. Each of the individuals signing this Agreement represents and warrants that he or she has been properly authorized by his or her respective organization to enter into this Agreement and that by their signatures each of the parties does intend and is hereby legally bound under the terms of this Agreement.

**ENERGY TRUST OF OREGON, INC.**

**PUBLIC UTILITY COMMISSION OF OREGON**

By: Margie Harris

By: [Signature]

Title: Executive Director  
Date: 11/29/05

Mr. Rick Willis  
Title: Exec. Dir.  
Date: 11/30/05

Approved for legal sufficiency by the Attorney  
General in accordance with ORS 291.047

By: David Elott  
David Elott  
Title: Assistant Attorney General  
Date: December 1, 2005