



**RESIDENTIAL ENERGY EFFICIENCY PROGRAM
ENERGY EFFICIENCY CONTRACTOR AGREEMENT**

Contract # _____

THIS IS AN AGREEMENT by and between PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY (the "District") and a contractor registered with the State of Washington under Registration No. _____, (the "Contractor") conducting business as:

- ☐ CORPORATION ☐ LIMITED LIABILITY COMPANY ☐ SOLE PROPRIETORSHIP
☐ PARTNERSHIP ☐ LIMITED PARTNERSHIP

Company Name: _____

Business Name *if Different*: _____

Business Mailing Address: _____

City: _____ State: _____ Zip: _____

Office Phone: _____ FAX: _____

Cellular Phone: _____ Email: _____

Website: _____ Date of Incorporation or Origination: _____

TERM

Abbreviation of Terms: For purpose of simplifying this Agreement, the following abbreviated terms and definitions are used:

"Owner" means the owner of residential housing unit(s) who request incentive from the *District* for the installation of Conservation Measures.

"Contractor" will be contracting with the Owner to perform work under the District's Residential Energy Efficiency Program, which includes conservation rebates for insulation, heat pumps, ductless heat pumps, heat pump commissioning and controls, duct sealing, and replacement windows. All work performed under the program will be done for *District* customers, within the *District's* service area.

"Specifications" means the most current version of the District Weatherization Specifications, Heat Pump System Installation Standards, and Geothermal Heat Pump Installation Standards.

"Programs" mean those that are established conservation programs offered by the *District*

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AGREEMENT

The parties agree:

1. Contractor Qualifications. The *contractor* represents that:

- a. it is qualified, willing and able to competently install Conservation and Energy Efficiency Measures in residential housing units located in the *District's* service area in accordance with Program requirements and specifications
- b. it has all required governmental licenses and permits
- c. it has held a valid Certificate of Registration as a contractor issued by the Washington State Department of Labor and Industries under the same business name for no less than the last twelve (12) consecutive months
- d. it is insured and bonded as required by law and the terms of this Agreement
- e. all duct sealing, commissioning and controls, and heat pump installations will be performed by technicians who are Performance Tested Comfort Systems certified and perform work to the most current and updated PTCS standards.
- f. all air source heat pump installations shall be overseen by a *contractor* who is certified in ACCA manuals "D" and "J". Geothermal heat pump installations shall be overseen by an IGSHPA accredited *contractor*.
- g. all ductless heat pump installations shall be performed by a *contractor* who has attended a NW Ductless Heat Pump Project orientation and has successfully completed a manufacturer's training for the equipment being installed.
- h. the *Contractor* will complete and provide any and all documentation required under the Program. The *Contractor* will provide proof of training and certifications required for program compliance, as requested by the utility. These may include but are not limited to ductless heat pump manufacturer installation and service training, PTCS duct seal and heat pump commissioning certifications, RSES, NATE or equivalent certifications in ACCA Manual "D" and "J".

2. Business Records. The *Contractor* agrees to provide the *District*, upon request, any business records pertaining to *Contractor's* qualifications to install Conservation or Energy Efficiency Measures and to participate as a *Contractor* under the Programs.

3. PUD –Residential Energy Efficiency Program Contractors' List.

Listing. If in compliance with this Agreement and rules and regulations of the Programs, the *Contractor* shall be listed by the *District* as one of the number of contractors willing to supply and install Conservation or Energy Efficiency Measures in residential housing units located in the *District's* service area.

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4. **Non-Exclusive Agreement.** The *Contractor* understands and agrees that this is not an exclusive commitment to the *Contractor* by the *District* and that the *District* will sign agreements similar to this one with other *Contractors*. Nothing in this Agreement shall constitute a commitment by the *District* that an Owner will request a bid from the *Contractor* or will enter into a contract with the *Contractor*.
5. **Term.** This Agreement shall be effective from date hereof for a term of two (2) year and shall be extended for successive two-year periods if the *District* is furnished with proof of compliance with applicable insurance and performance bond requirements. This shall not limit the ability of either party to terminate the Agreement as provided herein.
6. **Termination of Agreement.** Either the *Contractor* or the *District* may terminate this Agreement by delivering to the other party a written notice of termination setting forth the effective date of the termination which shall be at least three (3) working days following the date of delivery of such notice. As an alternative to the actual delivery of notice, such notice of termination may be made by mailing two (2) copies of the notice of termination to the other party. One such notice is to be mailed by first class mail, postage prepaid, and the other copy of the notice is to be mailed certified mail, return receipt requested. Such mailed notice shall be effective no earlier than on the seventh day following mailing. The *Contractor* will immediately: (a) notify all Owners with whom the *Contractor* has contracts and those to whom the *Contractor* has submitted bids, of such termination; (b) furnish the *District* with a list of uncompleted jobs; and (c) advise the *District* which of the uncompleted jobs the *Contractor* expects to complete by the date upon which termination will be effective. Once a *Contractor* or the *District* terminates the Agreement, the *Contractor* may not reapply to be on the *District's* approved *Contractor* list for a period of twenty-four (24) months.
7. **Notice.** Any notice to the *Contractor* shall be delivered or mailed to the address given on page one of this agreement. Any notice to the *District* shall be delivered or mailed to, Benton PUD, Attn: Manager of Contracts & Purchasing, 2721 W. 10th Ave., Kennewick, WA 99336
8. **Contract Between Owner and Contractor.**
 - a. **Owner's Request for Bid.** Owners who wish to obtain an incentive from the *District* for the installation of Measures are to contact one or more contractors listed on the PUD Contractors' List, and request bids for the installation of desired Conservation or Energy Efficiency Measures.
 - b. **Contractor's Bid.** Should a *Contractor* wish to make an offer to enter into a contract with the Owner, such offer shall be set forth in a bid submitted to the Owner. The bid will include materials to be used, the cost of the installation and all information necessary to constitute a complete contract, should the Owner accept the Installation bid.
 - c. **Owner's Acceptance of Bid.** If the Owner decides to enter into a contract with the *Contractor*, the Owner will do so by accepting the Installer's bid.
 - d. **Conservation Participation Agreement.** At time of bid the contractor will provide the Owner with the Conservation Participation Agreement.

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9. **Installer's Certification – District's Discretionary Inspection.** The *Contractor* shall, after completion of its contract with the Owner, notify such completion to the Owner and to the *District*. *Contractor* submitted Conservation Measure documents to the *District* will suffice for *District* notification. The *District*, at its discretion, may inspect the work performed by the *Contractor* and if it does so will advise both the Owner and the *Contractor* if, in the *District's* opinion, the *Contractor's* performance meets the specifications and requirements of the Programs. Any inspections made by the *District* will be solely to determine whether the installation of measures has been made in a manner which qualifies for the incentive proceeds; and, the *District's* approval or certification does not in any manner constitute a representation or warranty regarding the habitability of the residential unit(s), construction methods used, adequacy of materials utilized, safety, or any matters other than compliance with the requirements of the Programs. *District* inspections are not intended to establish or imply any duty on the part of the *District* to discover or report any defects related to code violations or hazards of any nature in the Residential Units(s) in which the Measures are installed.
10. **Penalties/Fees.** *Contractors* are subject to re-inspect fees, per incident, if needed to verify that an installation meets Program requirements. Fees may be withheld from incentive payments made to a *Contractor*, solely at the discretion of the *District*. Penalties/Fees are the *Contractors* sole responsibility and shall not be passed on to owner.

Re-inspection Fees are:

Insulation	\$100
Duct Sealing	\$100
Combustion Zone Depressurization	\$100
Heat Pump	\$100
Windows	\$100

11. **Invoicing.** The contract for the installation of the Measures is between the *Contractor* and the Owner. The *Contractor* will submit its invoice (i.e., an invoice requesting payment) to the Owner showing final project cost (including taxes) including incentives. The *Contractor* will request the incentive payment from the *District* by submitting to the *District* a copy of the customer's invoice, Owner's Conservation Participation Agreement, a copy of the Owners warranty covering labor and materials and all other required program documents. The *District* will submit payment within 45 days for all completed jobs.

Send Mail to: Benton PUD
Attn: Conservation
2721 West. 10th Ave.
PO Box 6270
Kennewick, WA 99336

Fax: (509)582-1296
Email: conservation@bentonpud.org

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12. Insurance and Performance Bond

- a. **Insurance.** The *Contractor* shall have, and maintain throughout the Contract period, insurance and benefits in the following minimum requirements:
- i. Workers' compensation insurance, Social Security, Federal Income Tax deductions, and any other taxes or payroll deductions required by law for, or on behalf, of its employees.
 - ii. *Contractor* shall provide an endorsement on the Commercial General Liability and Property Damage policy naming the *District* as additional insured and add a separation of insured clause or a cross liability endorsement.

The *District* shall have the right at any time to require commercial general liability, automobile liability, and property damage insurance greater than those required in subsection (a) of this section.

Contractor shall deliver to the Purchasing Department of the *District*, no later than ten (10) days after award of the Agreement, but in any event prior to execution of the Agreement by the *District* and prior to commencing work, Certificates of Insurance, identified on their face as the Agreement Number to which applicable, as evidence that policies providing such coverage and limits of insurance are in full force and effect, which Certificates shall provide that not less than thirty (30) days advance notice will be given in writing to the *District* prior to cancellation, termination or alteration of said policies of insurance. Such advance notice of cancellation, termination, or alteration of said policies shall be delivered to the Purchasing Department of the *District*.

- b. **Performance Bond.** The *Contractor* shall procure and maintain at the Installer's expense during the term of this Agreement a performance bond on a form provided by the *District* in the amount of Twenty Thousand dollars (\$20,000), to cover work obtained hereunder. The bond shall be in favor of the *District* or Owner, and may be enforced either directly by the *District* or by any Owner.

13. **Provisions Incorporated in Contracts.** The following provisions are deemed to be included in any offer which the *Contractor* makes to an Owner and will become part of the contract between the *Contractor* and the Owner:

- a. **Compliance with Laws.** The *Contractor* will not perform any work without a valid contractor's license and any required building permit. The *Contractor* will comply with all building, fire, electrical, safety, or other codes and regulations of all governmental entities or agencies.
- b. **Dispute Resolution.** The *Contractor* agrees to attempt in good faith to reconcile any complaints made by any Owner against the *Contractor* and further agrees to participate in a conciliation conference if requested by the Owner.
- c. **Warranty.** The *Contractor* will provide a written warranty with each bid submitted to an Owner which states that all materials to be used and/or equipment to be furnished by the *Contractor* will be without defect and that the installation of Measures and all work performed by the *Contractor* will meet or exceed the specifications and standards required by law and those of the

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Programs. The *Contractor* acknowledges that by requesting its name to be placed upon the PUD – Contractor s' List, such *Contractor* is representing to Owners that it has particular skill and expertise with respect to the installation of Measures and that any Owner dealing with the *Contractor* will be relying upon the *Contractor's* skill and judgment to select and furnish suitable Measures and to properly install them in a manner, and for the purposes, for which such Measures are intended or used.

- d. **Correcting Defects.** Without limiting the warranty described above, it is agreed that the *Contractor* will correct any defects (including deviation from code, Program specifications, or industry standards) in material, equipment, installation, or other work performed under an agreement with the Owner, which are discovered within the term of the warranty, and that such correction of defects will be completed within a reasonable period of time without charge to the Owner.

14. **Enforcement of Contract by Owner.** The *Contractor* agrees that the covenants and representations made herein by the *Contractor* are also for the benefit of Owners who participate in the Programs, and further agrees that those Owners doing business with *Contractor* pursuant to the Programs are entitled to rely upon and have the benefit of the covenants and representations made by the *Contractor* herein. Owners must pursue their claims, rights and remedies directly against the *Contractor*, because the *District* is not a party to the contract between them. The provision shall not be construed to limited or impair the claims, rights and remedies of the *District*.

15. **Owner's Obligation to Pay Contractor.** The Owner's contract for the installation of Measures is with the *Contractor*, and the Owner is solely obligated to pay the Installer. The *District* is not liable or responsible if the amount of proceeds which the Owner obtains from an incentive is not sufficient to satisfy the Owner's obligation to the *Contractor*. The *District* has no contractual obligation, nor duty of any kind, to pay the *Contractor* other than the owner's incentive payment. The *Contractor* is not to be considered as a third party beneficiary of any commitment by the *District* to make an incentive to an Owner, for such commitment is for the benefit of the Owner, not for the benefit of the Contractor.

16. **Enforcement of Contract by Contractor.** The *Contractor* has the right to enforce its contract with the Owner, because the Owner is the only party obligated to pay and otherwise perform that contract. In doing so, the *Contractor* may foreclose any statutory lien upon the residential unit(s) and, in addition, sue the Owner for damages, specific performance, or any other remedy authorized by law.

17. **Indemnity.** The *Contractor* shall save and hold the *District* and, in addition, its commissioners, officers, employees and agents, harmless from and against all liability, damage, loss, claims, demands and actions on account of personal injuries or property loss or damage of any kind whatsoever, which arise out of, or are in any manner connected with or claimed to arise out of, or be in any manner connected with the performance of either this Agreement or any contract between the *Contractor* and Owner. The *Contractor* acknowledges that the specifications required by the Programs have been reviewed and agrees that they are reasonable and proper and further agrees to immediately, notify the *District* in writing if any revisions, modifications or amendments thereto are, in the *Contractor's* opinion,

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unreasonable or improper. However, if the injury, loss or damage is caused by, or results from the concurrent negligence of the: (a) *District*, its agents or employees; and (b) *Contractor*, its agents or employees; this Indemnity provision shall be valid and enforceable to the extent provided by law. The *Contractor* shall, at its own expense, or at the expense of its insurance carrier, investigate all such claims and demands, attended to their settlement, or other disposition, defend all actions based thereon, and pay all charges of attorneys and all other costs and expenses of any kind arising from such liability, damage, loss, claims, demands and actions.

18. **Assignment and Subcontractors.** This Agreement and the performance of the work hereunder may only be assigned or delegated by the *Contractor* to a party or subcontractor who is a registered contractor in the state of Washington.
19. **Non-Waiver.** Failure of the *District* to insist upon strict performance of, or waiver by the *District* of any breach of any of the terms, conditions, or obligations of this Agreement shall not be deemed a waiver of any other term, condition, covenant or obligation, or of any subsequent default or breach of the same or any other term, condition, covenant or obligation herein contained.
20. **Attorney's Fees.** In any dispute between the *District* and the *Contractor*, the prevailing party will be entitled to an award of reasonable attorney's fees and costs. Further, *Contractor* agrees to pay the costs and reasonable attorney's fees incurred by the *District* and/or by any Owner in defending against the claims of a supplier or other creditor of *Contractor*. The foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to the *District* or an Owner.
21. **No Kickbacks, Fraud, Etc.** The *Contractor's* bids shall represent offers for work actually to be performed and there shall be no payment for work not performed. Kickbacks, rebates or other non-program benefits from Owner's, suppliers, subcontractors or others are strictly prohibited and shall be subject to applicable State and Federal law, both criminal and civil. Violation of law with regard to the Programs, violation of Program rules and regulations or failure to perform installations in a workmanlike manner and in compliance with codes or specifications, may cause cancellation of this Agreement, barring the Installer from further participation in the Programs and subject the *Contractor* to suit.
22. **Governing Law – Venue.** The validity, construction, performance and application of this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation shall be in Benton County, Washington.
23. **Entire Agreement.** The terms, covenants and conditions of this Agreement constitute the entire contract between the parties, and no understandings or obligations not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties.

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☐ CORPORATION:

The Person executing this Agreement on behalf of the corporation is a corporate officer or an agent who is authorized to do so by the corporation's bylaws or by a resolution of the Board of Directors.

☐ LIMITED LIABILITY COMPANY:

The Person executing this Agreement on behalf of the limited liability company is a member or manager who has the authority to do so.

☐ PARTNERSHIP: or ☐ LIMITED PARTNERSHIP:

The person executing this Agreement on behalf of the partnership is a partner, or in the case of a limited partnership a general partner, acting as an agent of the partnership.

☐ SOLE PROPRIETORSHIP

The person executing this Agreement owns the business.

PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY

(Contractor Company Name)

By: _____

By : _____

Title: Assistant General Manager

Title : _____

Date: _____

UBI Number: _____

Date: _____

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