



May 14, 2024

Publication of Draft Agreement between Energy Trust and OPUC

Oregon Public Utility Commission (PUC) Staff files the attached draft of an *Agreement to Direct Funding to Nongovernmental Entity between Energy Trust and the PUC*. In 2024, the OPUC and Energy Trust are updating and modernizing the existing Agreement between the organizations to reflect statutory changes under House Bill 3141. The Agreement affirms the strong working relationship to direct funding and ensure successful delivery of services required to implement energy efficiency and renewable generation programs for Oregon investor-owned utilities.

A revised, draft Agreement, published today, provides transparency and an opportunity for the public to review and provide input. **Stakeholders and utilities are invited to submit formal comments by Thursday, May 30.** Additionally, Staff will host a **public workshop Tuesday, May 21 at 10-11 am.**

While the updated Agreement is bilateral between PUC and Energy Trust, Staff looks forward to sharing this process and making updates to the Agreement to reflect state policy changes around decarbonization, equity and energy burden, and planning.

Workshop Announcement

Staff will host a public workshop on **Tuesday, May 21, 2024 from 10:00 – 11:00 am PT** to review proposed updates to the Agreement.

Date: May 21, 2024

Time: 10:00 – 11:00 am Pacific Time

Access: Join ZoomGov Meeting

<https://puc-oregon-gov.zoomgov.com/j/1603066952?pwd=QW9KMIRqV0pReW9waExuN21pRElZZz09>

Meeting ID: 160 306 6952; Passcode: N!9w4Cy.Gb

One tap mobile +16692545252 US (San Jose)

Meeting ID: 160 306 6952; Passcode: 6612529009

Find your local number: <https://puc-oregon-gov.zoomgov.com/u/acsOWrQKN1>

References

[Existing Grant Agreement between Energy Trust of Oregon and Public Utility Commission of Oregon](#)



Docket Announcement

Schedule Overview

Grant Agreement Public Events	Initial Date
Stakeholder and utility outreach and engagement	March/April, 2024
Staff publish initial draft Agreement	Tuesday, May 14
Public comment period	May 15 – May 30
Public workshop	Tuesday, May 21
Staff memo and draft final Agreement posted publicly	Monday, July 1
Public Meeting for Commission consideration of approval of Agreement	Tuesday, July 9, 2024

Staff Contacts

Staff appreciates the valuable engagement by utilities and stakeholders and looks forward to a productive process. If you have questions or comments, please contact Peter Kernan at (971) 428-7782 or Peter.Kernan@puc.oregon.gov

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AGREEMENT TO DIRECT FUNDING TO NONGOVERNMENT ENTITY

Entered between

ENERGY TRUST OF OREGON, INC.

and

PUBLIC UTILITY COMMISSION OF OREGON

_____, 2024

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DRAFT

PUBLIC UTILITY COMMISSION OF OREGON

AGREEMENT TO DIRECT FUNDING TO NON-GOVERMENTAL ENTITY

This Agreement to Direct Funding to Non-governmental Entity ("Agreement"), is made and entered into by and between Energy Trust of Oregon, Inc., an Oregon nonprofit corporation (the "Energy Trust"), and the State of Oregon, acting by and through its Public Utility Commission of Oregon, established under ORS 756.014 (the "PUC"). Energy Trust and the PUC may be referred to as a "Party" or the "Parties" in this Agreement.

RECITALS

A. Prior to the effective date of this Agreement, Energy Trust and the PUC were parties to a grant agreement initially effective March 1, 2002. The grant agreement was amended and restated, effective November 2005. This Agreement is intended to replace and supersede all prior grant agreements between Energy Trust and the PUC.

B. The PUC, pursuant to ORS 756.040, has general authority to supervise and regulate each public utility, which includes authority to establish just and reasonable rates, and to represent the customers of a public utility and the public in all controversies respecting rates, valuation, service and all other matters under the PUC's jurisdiction. In addition, under ORS 757.695(1), the PUC may address the mitigation of energy burdens on customers as described in ORS 757.230(1) through various measures, including demand response and weatherization programs.

C. The Oregon legislature has granted the PUC discretion to require that a portion of the funds collected in an electric company's rates under ORS 757.054(4) be paid to a nongovernmental entity for the purpose of making expenditures consistent with the provisions of ORS 757.054. The legislature has further authorized the PUC under ORS 757.612(3)(d) to require funds collected by electric companies through public purpose charges be directed to a nongovernmental entity for investment in public purposes described in ORS 757.612(1). The legislature also recognizes in ORS 757.746 that the PUC may, through natural gas tariffs, require local distribution companies to direct funds collected to a nongovernmental entity for similar purposes.

D. Energy Trust has been formed to operate as a tax-exempt nonprofit corporation for charitable, scientific, literary and educational purposes that include supporting the development of cost-effective local energy conservation, market transformation energy conservation, and renewable energy resources for utility customers.

E. The PUC considers energy efficiency and the acquisition of renewable energy in the context of greenhouse gas emissions reductions, as required under state law.

F. Energy Trust and the PUC desire to enter into this Agreement to set forth the

terms and conditions applicable to the PUC's designation of Energy Trust as the nongovernmental entity authorized to receive funds collected pursuant to ORS 757.054, ORS 757.612 or the terms of a natural gas tariff.

The parties hereby acknowledge the accuracy of the foregoing recitals and, for good and sufficient consideration, agree as follows:

AGREEMENT

1. Defined Terms.

"Applicable Law" means general law including but not limited to a Constitution, statute, administrative rule or regulation, court decision, or common law that applies to obligations or activities of Parties contemplated by this Agreement. Use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

"Energy Trust" means Energy Trust of Oregon, Inc.

"Funds" refers to the funds collected pursuant to ORS 757.054, ORS 757.612, or the terms of a natural gas tariff that is in effect, that the PUC has directed be paid to Energy Trust.

"Notice" means a written notice directed to the appropriate party that reasonably apprises that party of the intended action that may follow such notice.

"Program Requirements" mean the PUC's requirements for the expenditure of Funds, as set forth in Exhibit A.

"PUC" or "Commission" means the Public Utility Commission of Oregon.

2. Effective date and Termination.

This Agreement shall become effective on the date this Agreement is fully executed. This Agreement, unless extended or terminated earlier in accordance with its terms, shall expire on December 31, 2030. After December 31, 2030, unless written notice that a party does not wish to automatically extend the term of the Agreement is provided to the other party on or before September 30 of each year, the parties agree that the term of the Agreement will be automatically extended for one additional year beginning on the following January 1. However, only five automatic extensions may occur, and the Agreement may not be automatically extended beyond December 31, 2035.

3. Agreement Documents.

This Agreement consists of the Agreement through the signature page, together with the following Exhibits, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Program Requirements

Exhibit B: Equity Objectives

In the event of a conflict between portions of this Agreement, the following order of precedence, listed from highest precedence to lowest will prevail: Agreement without Exhibits, *Exhibit A, Exhibit B.*

4. **Obligations of the PUC.**

- a. **Funding.** The PUC will enact such orders and adopt administrative rules as are necessary to ensure that the electric companies subject to ORS 757.054 and ORS 757.612 pay all funds collected from customers that the PUC directs to be paid to a nongovernmental entity directly to Energy Trust not less frequently than monthly, except as may be otherwise provided under Applicable Law. The PUC will also enact such orders and adopt rules as are necessary to ensure that local distribution companies authorized to collect funds to be paid to a nongovernmental entity under a natural gas tariff pay all funds collected directly to Energy Trust not less frequently than monthly, except as may be otherwise provided under Applicable Law.
- b. **Sole Source of Funding.** Amounts collected from utility customers pursuant to ORS 757.054, ORS 757.612, or the terms of a natural gas tariff that is in effect and that the PUC has directed to be paid to Energy Trust are the sole source of funding for this Agreement. The PUC shall have no obligation to pay any amounts under this Agreement from moneys deposited in the State Treasury, including but not limited to the General Fund; nor will the PUC have any obligation to seek an appropriation or other expenditure authority from the Oregon Legislative Assembly to fund Energy Trust's obligations under this Agreement.
- c. **Non-appropriation.** The PUC's obligation to perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of the PUC.

All obligations of the PUC under this Agreement are subject to the PUC's receipt of sufficient legislative appropriations and expenditure authority, in the reasonable administrative discretion of the PUC, to carry out such obligations.
- d. **Review of Strategic Plan and Multiyear Plan.** The PUC shall review Energy Trust's strategic plan and multiyear plans as described below in *Section 6(b)*.
- e. **Performance Measures.** The PUC shall establish and update, on a periodic basis, quantifiable performance measures, including equity metrics as required under ORS 757.747, that clearly define the PUC's minimum expectations of

Energy Trust's performance in administering and expending Funds directed to Energy Trust under the terms of this Agreement.

- f. **Ex Officio Board Member.** The PUC will make reasonable efforts to appoint an Ex Officio member to Energy Trust's board of directors.
- g. **Staff Liaison.** The PUC will designate, at minimum, one Staff member to provide Staff oversight to the implementation of this agreement.

5. **Obligations of Energy Trust.**

- a. **Expenditure of Funds.** Energy Trust will spend Funds it receives pursuant to this Agreement in compliance with the terms of this Agreement, as further stated in *Exhibit A*, Program Requirements, and with Applicable Law. Nothing contained herein will be deemed to prevent Energy Trust from receiving funds from other sources for activities that are consistent with its organizational purposes, provided such funds are accounted for separately from the Funds.
- b. **Programming.** Energy Trust shall design, develop, and implement appropriate programs for the expenditure of Funds, consistent with Program Requirements in *Exhibit A*. Energy Trust shall employ long and short-term strategic planning to identify and address the evolving needs of customers and changing technologies and to design and test programs accordingly. Energy Trust shall make these programs available to eligible customers consistent with available funding and program design. Energy Trust may request that the PUC take action to increase the Funds directed to Energy Trust pursuant to this Agreement to address a planning priority.
- c. **Corporate Operations.** During the term of this Agreement, Energy Trust shall 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 Applicable Law.
- d. **Nongovernmental Entity.** Energy Trust shall comply with the requirements imposed on the nongovernmental entity designated to receive Funds in Applicable Law, including ORS 757.746, and in any Commission administrative rules and orders.
- e. **Information and Calculation Support.** Upon request of the PUC, Energy Trust will provide (i) analysis and research and (ii) perform and provide calculations related to energy savings, avoided costs and other costs and benefits associated with the Program Requirements and expenditure of the Funds.

- f. **Transparency and Stakeholder Input.** Energy Trust shall operate in an open and transparent manner. Energy Trust shall provide opportunities for its advisory councils and other stakeholders, including but not limited to energy utilities providing the Funds, to have meaningful input into its major planning processes, as described in *Section 6(b)* below and with regard to other processes where stakeholder input is required under Applicable Law.
- g. **Equity Objectives.** Energy Trust shall conduct its operations consistent with the Equity Objectives described in *Exhibit B*.
- h. **Administrative Policies and Procedures.** Energy Trust shall 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. Energy Trust shall adopt policies substantially similar to the State of Oregon Department of Administrative Services' Oregon Accounting Manual requirements for expenditures of the Funds on social events such as retirement or holiday parties, non-travel meals and refreshments, and travel reimbursement. Notwithstanding this requirement, Energy Trust will not be required to amend its policy regarding travel reimbursement for remote employees in Oregon and Washington state who reside more than 90 miles from the Energy Trust office to conform to the Oregon Accounting Manual. All such policies shall be subject to relevant performance measures established by the Commission. Energy Trust shall adopt policies to limit any authorized employee recognition to \$50 per employee each calendar year.
- i. **Audit Requirements.** Energy Trust shall retain the services of an independent audit firm to conduct an annual financial audit which includes in its scope all expenditures of the Funds made by Energy Trust and provide to the PUC, no later than 90 calendar days after its issuance, beginning in 2025, a true and correct copy of the auditor's final report. Each audit must apply Generally Accepted Accounting Standards (GAAS). Energy Trust shall cooperate with all requests from the auditor for data and other related requests from the auditor. Disputed points not resolved between Energy Trust and the auditor, and any exceptions from, qualifications of, or exclusions from the audit must be noted in the final audit report.
- j. **Management Review and Evaluation.** 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 2029. 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 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 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 Energy Trust's response to suggestions made.
- k. **Performance Measures.** Energy Trust will meet the performance measures adopted by the PUC, including but not limited to equity metrics adopted under ORS 757.747, except where circumstances beyond the control of Energy Trust substantially limit its ability to meet the performance measures. The PUC will take into account causal factors beyond Energy Trust's control and any mitigating action taken by Energy Trust when evaluating Energy Trust's performance as compared to the established performance measures.
- l. **Utility Agreements.** Energy Trust will, as necessary, enter into agreements with electric companies and natural gas distribution companies to facilitate the transfer of Funds to Energy Trust as required by the PUC and in amounts sufficient to develop and implement the Program Requirements. Energy Trust will, as necessary, enter into agreements with electric companies and natural gas distribution companies to facilitate the exchange of information regarding utility customers and program activity, and to collaborate on outreach and marketing for Energy Trust programs. Energy Trust may not restrict the information available to the PUC under the terms of any utility agreement.
- m. **Insurance.** Energy Trust shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against directors' and officers' liability and sufficient to insure activity to implement the Program Requirements. Energy Trust shall include the PUC (i) as an additional insured on its liability insurance coverages, and (ii) as a loss-payee on its property insurance and any performance bonds or letters of credit taken out to insure performance under this Agreement, provided, however, that for so long as this Agreement is in effect and no Notice of Termination has issued, the PUC shall have no claim to any proceeds of property insurance, performance bonds or letters of credit that are recovered in respect of performance under this Agreement, and that Energy Trust applies or intends to

apply toward meeting Program Requirements or other obligations under this Agreement following any casualty related to this Agreement. Proceeds of any kind of the foregoing that are not eligible or expected to be applied to meet Energy Trust's obligations under this Agreement shall be paid to the PUC in trust for contributing utility customers in proportion to any transfer of Funds previously directed by the PUC and in proportion to other funding sources that are also loss-payees.

- n. **Compliance with Laws.** Energy Trust shall comply with all Applicable Law, including, to the extent such laws are applicable without being a requirement of this Agreement: (A) Title VI of the Civil Rights Act of 1964; (B) Title V and Section 504 of the Rehabilitation Act of 1973; (C) the Americans with Disabilities Act of 1990 and ORS 659A.142; (D) all regulations and administrative rules established pursuant to the foregoing laws; and (E) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

6. **Accountability and Oversight.**

- a. **False Claims Act.** Energy Trust acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Energy Trust that pertains to this Agreement or to the Programs it provides pursuant to this Agreement. Energy Trust certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Energy Trust further acknowledges in addition to the remedies set forth below, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Energy Trust.
- b. **Transparent Planning Processes.**
 - i. **Strategic Plan.** Unless otherwise agreed by the Parties, at least once every five years, Energy Trust shall adopt a strategic plan covering a planning period of at least five years and setting forth its vision, expected strategies and goals for execution of its vision, including but not limited to, execution of the Program Requirements (the "Strategic Plan"). Energy Trust shall provide a copy of the Strategic Plan to the PUC.
 - ii. **2025 Budget and Multiyear Planning.** Energy Trust will develop financial budgets and business plans as part of multiyear plans to implement and execute the Strategic Plan.

- (A) **2025 Budget.** For calendar year 2025, Energy Trust shall develop a budget for 2025 within a one calendar year planning period for activity related to this Agreement, and provide the PUC with an initial draft thereof on or before November 15, 2024, prior to the adoption of a new budget and a final budget, approved by Energy Trust's board of directors, on or before December 31, 2024.
- (B) **Multiyear Plans.** Starting in 2026, Energy Trust shall develop a plan for a planning period of up to five years. Such a plan shall identify strategies, activities, and anticipated expenditures and revenues for implementation and execution of the Strategic Plan (the “Multiyear Plan”). Energy Trust will provide a copy of a final proposed Multiyear Plan to the PUC prior to presenting the final proposed Multiyear Plan for approval to Energy Trust board of directors.

Energy Trust shall engage the PUC in development of Energy Trust Multiyear Plan, including in the design of plan management indicators and tools to describe appropriate levels of circumstances that precipitate actions Energy Trust will take to adjust course. Energy Trust will provide a copy of a draft of Energy Trust Multiyear Plan to the PUC not less than sixty (60) days prior to adoption of Energy Trust Multiyear Plan by Energy Trust board of directors. The PUC may provide recommendations to Energy Trust. Upon receiving PUC recommendations, Energy Trust shall review and consider revising Energy Trust Multiyear Plan and shall provide a revised Energy Trust Multiyear Plan to the PUC before adoption of the final proposed Energy Trust Plan by Energy Trust board of directors.

On an ongoing basis, not less than quarterly throughout the term of this Agreement, Energy Trust will engage the PUC in review of its performance as compared to the Multiyear Plan by presenting budget reports and information. Such engagement will include, but not be limited to interim reporting of Energy Trust’s actual performance against performance measures. Energy Trust will include an 18 month projection of revenues to be received as directed in this Agreement, other revenues to be received, and will describe proposed expenditures, savings, and generation in such manner as may be requested by the PUC. Reporting of expenditures will include information about administrative

costs and whether such costs may be considered reasonable.

Upon request of the PUC, Energy Trust shall review and consider revising the Multiyear Plan and shall submit an initial draft to the PUC before adoption of any final revised Multiyear Plan.

c. Reporting

- i. **Mid-Year Report.** Energy Trust shall submit a report to the PUC within 45 days of the end of the second quarter, comparing its actual performance to PUC's performance measures on a mid-year basis.
- ii. **Annual Report.** On or before April 15 of each year, Energy Trust shall 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 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 utility service area from which the Funds were collected.
 - (B) A link to Energy Trust's website list of Energy Trust's then acting board of directors, including biographies, and Energy Trust's current board development guidelines.
 - (C) A link to Energy Trust's website roster of the then acting members of Energy Trust's advisory councils and committees and a summary of each such council's or committee's activities during the previous calendar year.
 - (D) Summaries of program accomplishments directed at achieving the Strategic Plan and Multiyear Plan, including specific information concerning energy savings, greenhouse gas emission reductions, renewable resource projects, and other measurable outcomes. Such summaries must 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 Energy Trust execution and implementation of the Program Requirements.

- (E) A description of any changes to Energy Trust's Multiyear Plan or Strategic Plan since the previous annual report.

- iii. **Tax Reports.** Annually, not later than 15 days after such reports have been filed with the proper authorities, 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.

- iv. **Utility Agreements.** Energy Trust shall provide the Commission with a copy of any agreement it executes with a utility directing Funds to Energy Trust within 60 days of executing the agreement and shall provide a copy of any breach, or notice of termination issued under the terms of any such agreement within 20 days of receipt or issuance by Energy Trust.

- d. **Notice of Changes.** 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 6(c)** 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. 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 Energy Trust or by third parties (such as by audit).

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

 - iii. Any change in the corporate organization or structure of Energy Trust.

- e. **Requests for Information.** The PUC may issue written requests for information related to Energy Trust's fulfillment of its obligations under this Agreement. Energy Trust shall respond to such written requests for information received from the PUC and may not enter into third-party agreements that restrict it from fully responding to a request for information from the PUC. If

Energy Trust receives such a written request from the PUC calling for information that Energy Trust reasonably believes to be confidential in nature ("Confidential Information"), Energy Trust may provide the information to the PUC consistent with the requirements of OAR 860-001-0070 or pursuant to the terms of a protective order. If the PUC has requested information that Energy Trust reasonably believes is Confidential Information and may not be adequately protected from public disclosure as being exempt under the Public Records Law or similar law, the Parties may confer regarding Energy Trust's concern. The PUC may then affirm, modify or withdraw its information request. If Energy Trust provides the PUC with information identified as confidential pursuant to OAR 860-001-0070 or the terms of a protective order, the PUC shall treat the information as exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 through 192.505 and any other Applicable Law. The PUC shall, to the extent permitted by Applicable Law, give Energy Trust prompt written notice of any effort or attempt by third parties to obtain or require disclosure of such information and not less than seven business days to submit written objections to the PUC concerning such disclosure. Nothing contained in this Agreement will be deemed to otherwise restrict Energy Trust from pursuing other opportunities to dispute such disclosure under Applicable Law or to prevent the PUC from complying with any of its obligations under Applicable Law.

- f. **Right to Inspect.** 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 Energy Trust from transmitting additional information to the PUC concerning its affairs at any time during the term of this Agreement.
- g. **Identity and Privacy Protection Laws.** Energy Trust must have and maintain a formal written information security and privacy program that provides safeguards to protect personal information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628 and such other laws regarding personal information and data privacy and security. If Energy Trust or its agents discover or are notified of a potential or actual "Breach of Security", as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 646A.628, (collectively, "Breach") with respect to confidential information, Energy Trust must promptly but in any event within one calendar day (i) notify the PUC Representative of such Breach and (ii) if the applicable personal information was in the possession of Energy Trust or its agents at the time of such Breach, Energy Trust must (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide the PUC with a written root cause analysis of the Breach and the specific steps Energy Trust will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur.

7. Working through Concerns.

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 will provide the other with written notice of such concerns, which notice will reasonably specify the conduct in question and the nature and extent of such concerns, and the parties shall use best efforts to confer and identify a mutually-acceptable means to address the concerns identified for the purpose of advancing the goals and objectives and obligations of the Agreement..

8. Early Termination.

- a. **Mutual.** This Agreement may be terminated at any time by mutual written consent of the Parties.
- b. **By Agency.** The PUC may terminate this Agreement at the PUC's discretion, upon 120 days' advance written notice to Energy Trust;
- c. **Automatic Termination.** This Agreement will be automatically terminated as of the effective date of any of the following circumstances:
 - i. Dissolution of Energy Trust.
 - ii. Appointment of a receiver, trustee, liquidator, or conservator for Energy Trust or to take possession of all or substantially all of Energy Trust's property; or the filing of a petition for bankruptcy, insolvency, dissolution, liquidation, or reorganization, or order for relief in which Energy Trust is named as debtor, by, against, or with respect to 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 Energy Trust to secure a stay or discharge thereof within 45 days after such appointment or filing.
- d. **By Either Party for Breach.** 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 (a "Notice of Termination").
 - i. A party issuing a Notice of Termination must describe the nature of the breach with reasonable particularity and an opportunity for cure of the breach.
 - (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 8(d)(i)** will no longer be of any force or effect and this Agreement will remain in full force and effect.

e. **Obligations Upon Termination.** In the event a notice of termination is issued under this **Section 8**:

- i. Upon receipt of a written notice of termination initiated by the PUC, 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.
- ii. As of the date of termination, expenditures that have been proposed by the Energy Trust in its then current Multiyear Plan 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 contracts that cannot be terminated by the Energy Trust concurrently with the termination of this Agreement, the PUC may direct that such contracts shall continue to be funded during the Termination Period, as defined 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 designated by the PUC, to the extent permitted under the terms of such contracts. For any contracts that are not assigned, continued funding authorization by the PUC will include the reasonable costs of the Energy Trust's continuing administration of such contracts and other appropriate matters until the effective date of termination;
- iii. As of the date of termination, Funds that have previously been directed to Energy Trust in accordance with this Agreement that remain in Energy Trust's possession and for which Energy Trust has either entered into contracts or for which 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 Energy Trust's continuing administration prior to the date of termination, will be distributed by Energy Trust as directed by the PUC as soon as practicable; and

- iv. Upon termination, 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 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 contract that cannot be terminated on or prior to the 2nd anniversary of the termination of this Agreement, shall extend to the earliest date that the contract can be terminated.

9. **Remedies.**

- a. **PUC Remedies.** In the event Energy Trust breaches this Agreement and is unable to cure the breach, the PUC may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under **Section 8**, (b) requiring Energy Trust to complete, at Energy Trust's expense, additional activities necessary to satisfy its obligations or meet performance measures under this Agreement, (c) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (d) declaring Energy Trust ineligible for designation as the nongovernmental entity by the PUC under future agreements. These remedies are cumulative to the extent the remedies are not inconsistent, and the PUC may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- b. **Energy Trust Remedies.** In the event the PUC breaches this Agreement, and whether or not Energy Trust elects to terminate this Agreement, Energy Trust's sole monetary remedy will be, within any limits set forth in this Agreement, direction of Funds for program activities completed and authorized expenses incurred, less any claims the PUC has against Energy Trust. In no event will the PUC be liable to Energy Trust for any expenses related to termination of this Agreement or for anticipated funding.

10. **Miscellaneous Provisions.**

- a. **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.

- b. **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.
- c. **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.
- d. **Notices.** Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Representative at the physical address or email address below, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

To: Energy Trust of Oregon, Inc.
Address: 421 SW Oak Street, Suite 300
Portland, Oregon 97204

Attention: Executive Director

Email: _____

Phone: _____

To: Public Utility Commission of Oregon
Address: 201 High St. SE, Suite 100
Salem, OR 97301-3398

PO Box 1088
Salem, OR 97308-1088

Attention: Chair of PUC
Email: _____
Phone: _____

A Party may designate a new Party Representative to receive notices by written notice to the other Party.

- e. **Amendments.** This Agreement may be amended only by an instrument in writing executed by all the Parties and, when required, approved in accordance with applicable law, which writing must specifically refer to this Agreement.
- f. **Legislative, Regulatory or Administrative Changes.** If there is (i) (A) any change in any state or federal 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(f)*, 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 agree to mediation. 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.
- g. **Relationship of Parties.** The parties acknowledge that 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 Energy Trust will be furnished in a manner consistent with the terms of this Agreement.
- h. **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.

- i. **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. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
- j. **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.
- k. **Electronic Signatures.** The Parties agree that any electronically-generated signature of a Party is valid and binding to the same extent as an original signature.
- l. **Time of Essence.** Time is of the essence in the performance by Energy Trust of the terms of this Agreement.
- m. **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.
- n. **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.
- o. **Indemnification.** 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 Energy Trust or its directors, employees, contractors, or other agents or representatives. Notwithstanding anything contained in this Agreement to the contrary:

- i. 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

Energy Trust assumes sole liability for breach of the conditions of this Agreement or the Program Requirements (including all terms and conditions of this Agreement) by Energy Trust or any of its officers, agents, employees, and assigns. Subject to any limitations in the Oregon Constitution, Energy Trust shall save, hold harmless, indemnify and, subject to ORS chapter 180, defend the State of Oregon, PUC and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to funds directed to Energy Trust by the PUC, this Agreement, or the Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Energy Trust or its subcontractors, agents, or employees under this Agreement or related to the Agreement or the Program Requirements.

- p. **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.
- q. **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. 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.
- r. **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. Notwithstanding the foregoing, if a judicial action or proceeding must be brought in a federal forum, it is to be brought in the United States District Court for the District of Oregon. Nothing in this **Section 10(r)** is intended or may be construed as a waiver by the PUC of any defense or

immunity, including but not limited to sovereign immunity or immunity based on the Eleventh Amendment to the United States Constitution.

- s. **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.
- t. **Survival.** In addition to other provisions of this Agreement that survive in accordance with their terms, the Parties agree that the provisions of **Sections 8(e), 9, 10(o)**, and this **Section 10(t)** will survive termination of this Agreement.
- u. **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.
- v. **Authorized Parties.** Each of the individuals signing this Agreement represents and warrants that the individual has been properly authorized by the individual's respective organization to enter into this Agreement and that by their signatures each of the Parties does intend to be and is hereby legally bound under the terms of this Agreement.

ENERGY TRUST OF OREGON, INC.

PUBLIC UTILITY COMMISSION OF OREGON

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

By: _____

Title: Assistant Attorney General

Date: _____

DRAFT

EXHIBIT A

PROGRAM REQUIREMENTS

1. **Electric utility programs.** For customers of electric companies directed by the PUC to transfer Funds to Energy Trust, Energy Trust shall develop programs for support of investment in renewable energy resources and to support distribution system connected technologies, market transformation, and for cost-effective energy efficiency consistent with the requirements of Applicable Law under this Agreement.
2. **Natural Gas utility programs.** For customers of natural gas distribution companies directed by the PUC to transfer Funds to Energy Trust, Energy Trust shall develop programs that provide customers with opportunities for energy conservation and cost-effective energy efficiency consistent with the terms of the applicable natural gas company tariffs and Applicable Law.
3. **General program requirements.** For programs developed for purposes of *Sections 1* and *2* of this Exhibit, Energy Trust shall comply with the following:
 - a. **Compliance with Strategic Plan and Multiyear Plans.** Energy Trust shall develop programs that are directed at achieving its Strategic Plans and Multiyear Plans and identify measurable outcomes for each program. Programs may include public education campaigns, and pilot and demonstration programs.
 - b. **No Lobbying.** Energy Trust may not expend any Funds for lobbying, or for any other political purpose, such as endorsing or opposing candidates for public office or ballot measures. The parties agree that Energy Trust may expend Funds to work with local, state, federal and tribal governments to provide information related to Energy Trust programs and expertise.
 - c. **Administrative Costs.** Funds expended on administrative costs must be prudent, reasonable and support efforts toward achieving Program Requirements. Energy Trust shall seek to maximize administrative efficiency maintain ongoing and sustained organizational effectiveness as identified in any performance measures established by the PUC. Energy Trust shall allocate administrative costs across all programs in a reasonable and consistent manner consistent with generally accepted accounting principles.
 - d. **Compliance with Performance Measures.** Programs must be developed, operated and managed in a manner that complies with the performance measures as described in *Section 5(k)* above and as adopted by the PUC.
 - e. **Competitive Markets.** Energy Trust must seek to encourage development of competitive markets for energy efficiency services and renewable energy resources as long-term outcomes.

- f. **Competitive Bids.** When feasible, Energy Trust shall employ a nondiscriminatory competitive solicitation process prior to entering into binding agreements for expenditure of Funds.
- g. **Third Party Contracts.** Energy Trust will not enter into contracts with third parties for the expenditure of the Funds and which exceed the period of the then current Multiyear Plan without prior notification to the PUC unless the contract includes a provision permitting termination concurrently with the termination of this Agreement. Contracts between Energy Trust and third parties for expenditure of Funds which exceed the period of the then current Multiyear Plan must contain a provision permitting Energy Trust to terminate the contract (subject only to reasonable advance notice requirements) concurrently with the termination of this Agreement. Contracts between Energy Trust and third parties for expenditure of Funds will contain confidentiality provisions consistent with this Agreement and Applicable Law. Contracts between Energy Trust and third parties for expenditure of Funds which exceed duration of the then current Multiyear Plan must contain a provision permitting Energy Trust to assign its interest in the contract to a third party.
- h. **Benefits to Customer Classes.** After consideration of the sources of funding, all classes of utility customers and their related geographic areas generally should benefit from efficiency and renewable energy program expenditures. However, in developing programs, Energy Trust may take into account the differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers.
- i. **Coordination.** Each program will coordinate with existing local, state, and regional programs that are substantially related in purpose and of a sufficient size, scope and duration to impact customer participation.
- j. **Cost-effective Energy Efficiency.** Energy Efficiency programs must be designed to be cost-effective and will be independently evaluated on a regular basis. This should not, however, restrict investment in pilot projects, educational programs, demonstrations, or similar endeavors. A majority of the Funds expended should be spent or committed in the calendar year in which the Funds are received.

Programs for energy efficiency generally must use measures and incentive levels that are cost-effective. Energy Trust may apply the Total Resource Cost (TRC) test, Utility Cost Test (UCT) or another test approved by the PUC to demonstrate cost-effectiveness by measure, by building, by program, or by portfolio except as otherwise required by order or administrative rule of the PUC or as required by Applicable Law. Energy Trust may request and receive an exception from such standards from the PUC, pursuant to processes directed by and PUC and as

otherwise required by order or administrative rule of the PUC or as required by Applicable Law or pursuant to alternative guidelines approved by the PUC:

i. An exception from the use of a cost-effectiveness test may be granted for a measure, building or program, as applicable (collectively referred to here as, “measure”), when:

- (A) The measure produces significant non-quantifiable non-energy benefits.
- (B) Inclusion of the measure will increase market acceptance and is expected to lead to reduced cost of the measure.
- (C) The measure is included for consistency with other demand side management (DSM) programs in the region.
- (D) Inclusion of the measure helps to increase participation in a cost-effective program.
- (E) The package of measures cannot be changed frequently and the measure will be cost effective during the period the program is offered.
- (F) The measure or package of measures is included in a pilot or research project intended to be offered to a limited number of customers.
- (G) The measure is required by law or is consistent with Commission policy and/or direction.
- (H) Inclusion of the measure mitigates energy burden.

EXHIBIT B

EQUITY OBJECTIVES

The Program Requirements and Energy Trust's operation shall be designed and implemented consistent with these Equity Objectives in this *Exhibit B*. The PUC expects program services delivered with the Funds to be developed in a manner that is responsive to the issues of diverse communities. Program services should be provided in a manner that is respectful of, and relevant to, the beliefs, practices, culture, and linguistic needs of diverse communities. To accomplish these objectives, the nongovernmental entity providing Program services under this Agreement must develop the knowledge and capacity to address equity issues at a structural, organizational, interpersonal, and individual level. The following are the PUC's equity objectives for Energy Trust, which are separate from and in addition to meeting and reporting on its performance under the equity metrics established by the PUC under ORS 757.747.

Expectations for Program Services

To the extent permitted by law, and as required by Applicable Law, Energy Trust shall:

- a) Work to build a workplace and staff culture and climate that promotes acceptance, inclusion, and respect of all individuals;
- b) Understand the communities served, in a non-static manner, including the communities' culture, values, norms, history, customs, and particular types of discrimination, marginalization, and exclusion they face in this country. Energy Trust shall apply that knowledge to services it provides under this Agreement in a responsive, non-limiting, and non-stereotyping manner;
- c) Whenever possible, interact with community members according to their preferred language and in a manner that is respectful of cultural norms; and
- d) Engage in continuous learning about their own biases, assumptions, and stereotypes that may limit their ability to be culturally responsive and to understand how these biases affect their work with communities served by Energy Trust.

To the extent permitted by law, Energy Trust shall:

- a) Ensure that applicants and employees are not subjected to unlawful discrimination in hiring, compensation, or the terms, conditions or privileges of employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, ethnicity marital status, age, political affiliation, or disability; and
- b) Ensure that any subcontract, purchase, or other agreement used to carry out the Program Requirements and entered into after the effective date of this Agreement expressly prohibits the performing entity from subjecting employees or applicants to discrimination in hiring, compensation or the terms, conditions or privileges of employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, ethnicity, marital status, age, political affiliation, or disability or equivalent measures.

In addition, Energy Trust shall collaborate with the PUC to develop an Equity Plan that supports the Equity Objectives in this ***Exhibit B*** and to conduct an annual assessment that assesses how Energy Trust is achieving equitable results in the following areas:

- a) Engagement and collaboration with communities and community-based organizations,
- b) Empowering staff, customers and communities to be involved in Energy Trust planning processes, including strategic planning and multiyear planning,
- c) Enhancing workforce equity so that the identities of Energy Trust staff reflect the changing population,
- d) Engagement and collaboration with small and disadvantaged businesses to promote supplier diversity in Energy Trust contracting; and
- e) Enhancing workplace equity to build and improve an environment that promotes acceptance, inclusion and respect of all individuals.

DRAFT