CITY

STRATEGIC ENERGY MANAGEMENT (SEM) FUNDING AGREEMENT
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY
and
CITY OF EVERETT

This Strategic Energy Management ("SEM") Funding Agreement ("Agreement") is executed by and between Public Utility District No. 1 of Snohomish County (UTILITY) and the City of Everett (END USER) for its facility at 4027 4th St. SE, Everett, WA, 98201 (Service Address). The UTILITY and END USER are also referred to herein individually as "Party" and collectively known as the "Parties."

WHEREAS, END USER has facilities in UTILITY's service area and purchases power from UTILITY; and

WHEREAS, UTILITY is a public utility organized under the laws of the State of Washington, and sells electric power to END USER that is acquired from Bonneville Power Administration (BPA); and

WHEREAS, BPA provides funds to UTILITY to pass through to END USER as the END USER implements energy saving measures and completes related activities under the BPA SEM program at END USER's facility; and

WHEREAS, The Parties agree to enter into a two-year BPA SEM Program engagement, herby referred to as Wastewater Energy Coaching (WEC), which emphasizes participation in WEC training sessions and implementation of low-cost energy efficiency measures.

NOW, THEREFORE, the PARTIES hereby agree to the following:

1. This Agreement is effective upon execution and will continue until the PARTIES' obligations have been met. If this Agreement has not been executed (signed) by END USER and returned to the UTILITY within 30 calendar days of being executed by UTILITY, the terms of this Agreement shall be null and void.
2. END USER shall designate a WEC "Executive Sponsor" to provide management support for the implementation of this project by completing Exhibit 1 of the Agreement.
3. END USER shall designate a WEC "Energy Champion" to (a) attend training workshops; (b) coordinate END USER's implementation activities; (c) serve as the primary contact for the WEC Providers (Energy Smart Industrial Technical Service Providers, Energy Smart Industrial Program staff); (d) implement suitable SEM action items; and (e) track implementation dates and if necessary, associated costs by completing Exhibit 1 of the agreement.
4. If agreed to by END USER and UTILITY, the Energy Champion will oversee the design and installation of a Performance Tracking System (PTS), capable of measuring and tracking energy consumption and energy savings performance. The Energy Champion will track installation costs and provide the data required to complete the PTS Verification Report.
5. END USER agrees to provide BPA, its designated WEC Provider, and UTILITY with the information necessary to establish and maintain a baseline energy model (Monitoring, Targeting, and Reporting [MT&R] model). The MT&R model will define the pre-engagement baseline and measure the energy savings associated with the implementation of END USER's WEC program. Necessary information includes electric energy consumption and plant loading data, and may also include natural gas consumption and any other relevant data that would impact electrical energy use.

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6. WEC Training Workshops – END USER shall assign two to four employees involved in the operation and/or maintenance of END USER's wastewater treatment plant to attend five WEC training workshops. Each WEC Workshop will be five to eight hours in duration.

7. WEC Site Visits – END USER shall schedule two to four (2-4) technical support site visits by WEC provider. The site visits shall occur at the END USER's plant and are intended to provide END USERs with support to identify and implement energy efficiency Action Items.

8. Action Item Implementation – END USER shall work with WEC Provider to implement energy efficiency Action Items at END USER's site between training workshops. END USER shall maintain records of the cost to implement Action Items approved by WEC provider.

9. The WEC Provider will work with END USER to compile two annual WEC Completion Reports that document energy savings achieved, changes implemented, and if applicable, implementation costs. UTILITY will subsequently report energy savings in the BPA reporting system (IS2.0 or its successor). Energy savings will be verified based on the latest revision of BPA's MT&R Guidelines document and will not include savings from any projects that have received or will receive funding from other BPA or UTILITY programs. Reported energy savings and any associated costs must be approved by BPA in order to qualify for incentives.

10. CONFIDENTIALITY

a. CONFIDENTIALITY OBLIGATIONS

Subject to the requirements of the Washington Public Records Act, RCW Chapter 42.56, and other applicable law and the provisions of this Agreement, the Parties agree to maintain the confidentiality of each and all of the information designated in writing as confidential by the other Party and shall not disclose such confidential information except as allowed under the provisions of this Section 10. The Parties shall take all reasonable and legally available steps to prevent the release of such confidential information to any party other than the signatories to this Agreement, and designated personnel, agents, and subcontractors of any of the Parties with a specific need to know such confidential information for the purposes permitted hereunder. Upon the expiration or termination of this Agreement for any reason, a Party shall upon request of the other Party return to the requesting Party any such confidential information which may be in its possession or control, and which has been properly designated as confidential by the requesting Party; provided, however, that the Party shall not be required to return the requested information if said information is subject to: a pending public record request; litigation involving the non-requesting Party; a court order against/involving the non-requesting Party; and/or similar circumstances.

b. INFORMATION NOT SUBJECT TO SECTION 10

The provisions of this Section 10 shall not be applicable to information which (i) is or becomes generally available to the public other than as a direct or indirect result of an intentional or inadvertent disclosure by the receiving Party or anyone to whom the receiving Party transmits the information, (ii) was in the possession of the receiving Party prior to its disclosure to the receiving by the disclosing Party, provided that such information is not known to the receiving Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the disclosing Party or another party, (iii) becomes available to the receiving Party from a source other than the disclosing Party, provided that such source is not known to the receiving Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the disclosing Party or another Party, or (iv) is independently developed by the receiving Party, other than in connection with this Agreement.

c. DISCLOSURES REQUIRED BY LAW

Nothing in this Agreement shall be construed to prohibit or limit any of the Parties to this Agreement from disclosures required or requested under applicable law, regulations, rules or procedures of any governmental authority including, without limitation, any regulatory agency or court of competent jurisdiction. Each Party shall promptly notify the other Party upon receipt of a request for disclosure of confidential information, so that such other Party may, at its own cost and expense, seek a protective order or other appropriate remedy. Under no circumstances whatsoever will a Party other than the Party which has designated the requested information as confidential have any obligation whatsoever to initiate, defend against, or otherwise participate in or in connection with any inquiry, investigation, action, claim, suit, arbitration, or proceeding relating to the release of any such confidential information. Nothing herein shall be construed as prohibiting any Party from using confidential information in connection with (i) any claim against the other Party to this Agreement in a dispute arising under or related to this Agreement or (ii) any third party claims for which any Party is seeking indemnification from the other Party to this Agreement. No Party to this Agreement shall have any liability whatsoever to the other Party for the disclosure or copying of designated confidential information where, in the opinion of legal counsel for the disclosing Party, the disclosing Party is compelled to permit such disclosure or copying or else risk civil or criminal liability or penalty.

11. END USER assumes the risk of any loss or damage that END USER may incur in connection with participation in WEC. Energy savings and facility improvements are not guaranteed. In no event will UTILITY, BPA, or their representatives be liable for more than the amount of any incentives based on the energy saving calculations associated with this Agreement.

12. UTILITY must give END USER all reimbursements received from BPA for the WEC Program as they pertain to END USER. Funding levels and amounts are set according to BPA's Energy Efficiency Implementation Manual and are described in attached and incorporated Table 1. UTILITY shall pay END USER no later than thirty (30) days after receipt of funds from BPA. UTILITY is never obligated to pay monies to END USER in an amount greater than the amount received from BPA, and END USER is not obligated to return any money already received.

13. NO WARRANTIES AND HOLD HARMLESS: END USER acknowledges that no warranties, implied or expressed, are created under this Agreement; and, that END USER waives any claim, cause of action or breach of warranty claim which may arise under this Agreement. The Parties stipulate this waiver is made upon mutual assent, and is knowingly and intelligently made.

14. INDEMNIFICATION AND HOLD HARMLESS

a. <u>UTILITY'S INDEMNIFICATION OF END USER</u>.

Except as otherwise provided in this Agreement, the UTILITY shall indemnify, defend and hold harmless the END USER, its officers, officials, employees and agents, from and against all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and reasonable attorneys' fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of negligent or intentional acts, errors or omissions of the UTILITY, its officers, officials, employees and/or agents in the performance of this Agreement; provided, that in the event of the concurrent negligence of the Parties, the UTILITY's obligations hereunder shall apply only to the percentage of fault attributable to the UTILITY, its officers, officials, employees and/or agents.

b. END USER'S INDEMNIFICATION OF UTILITY

Except as otherwise provided in this Agreement, the END USER shall indemnify, defend and hold harmless the UTILITY, its officers, appointed and elected officials, employees and agents, from and against all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and reasonable attorneys' fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of negligent or intentional acts, errors or omissions of the END USER, its officers, officials, employees and/or agents in the performance of this Agreement; provided, that in the event of the concurrent negligence of the Parties, the END USER's obligations hereunder shall apply only to the percentage of fault attributable to the END USER, its officers, officials, employees and/or agents.

c. WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE ACT

The indemnification provisions of this Section are specifically intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as with respect to the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

d. NO RIGHT TO INDEMNIFICATION FOR ANY THIRD PARTY

Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.

e. SURVIVIAL OF INDEMNIFICATION OBLIGATIONS

The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

15. MISCELLANEOUS

a. INTEGRATION CLAUSE

This Agreement sets forth the entire agreement of the Parties and supersedes any and all prior agreements with respect to the subject matter or this Agreement. The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. The headings used herein are for convenience of reference only and shall affect the meaning or interpretation of the Agreement.

b. TERMINATION OF AGREEMENT

Either Party may terminate this Agreement at any time for any or no reason with thirty (30) calendar days' written notice to the other Party.

c. NON-DISCRIMINATION

i. During the performance of this Agreement, END USER shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, sexual orientation, religion, national origin, creed, marital status, political affiliation, and/or the presence of any sensory, mental or physical handicap. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or

termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. In addition, the parties hereby incorporate 41. C.F.R. 60-1.4(a)(7); 29 C.F.R. Part 471, Appendix A to Subpart A; 41 C.F.R. 60-300.5(a)11; and 41 C.F.R. 60-741.5(a)6; if applicable.

ii. **END USER and any subcontractors shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 741.5(a). These regulations prohibit discrimination against qualified protected veterans, and qualified individuals on the basis of disability, respectively, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities, respectively.**

d. NO THIRD PARTY BENEFICIARIES

Except as expressly set forth in this Agreement, none of the provisions of this Agreement shall inure to the benefit of or be enforceable by any third party.

e. WAIVERS

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment to any extent of the first Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

f. SEVERABILITY

i. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

ii. If any provision of the Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

g. AMENDMENT

No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

h. DEFINITIONS

Unless otherwise required by the text of this Agreement, all technical terms contained herein shall have the meaning ordinarily assigned to them in the electric utility industry.

i. DRAFTING OF AGREEMENT

Both Parties have participated in the drafting of this Agreement. As such, it is agreed by the Parties that the general contract rule of law that ambiguities in the contract language shall be construed against the drafter of a contract shall have no application to any legal proceeding, arbitration and/or action in which this Agreement and its terms and conditions are being interpreted and/or enforced.

j. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Washington, with venue for any disputes in Snohomish County, Washington; provided that venue for any matter that is within the jurisdiction of the Federal Court shall be in the United States District Court for the Western District of Washington at Seattle, Washington. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of proceedings in such courts.

k. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

l. AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT

The undersigned represent that they have full authority to enter into this Contract and to bind the Parties for and on behalf of the legal entities set forth below.

WEC Agreement Executed by Public Utility District No. 1 of Snohomish County

Signed By: James N. West

Print Name: James N West

Title: Assistant General Manager, Customer and Energy Services

Dated: 3/8/2017

WEC Agreement Executed by City of Everett

Signed By: Ray Stephanson

Print Name: Ray Stephanson

Title: Mayor

Dated: 4/6/2017

ATTEST:

City Clerk

APPROVED AS TO FORM

JAMES D. ILES, City Attorney

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Exhibit 1: Designation of WEC Project Executive Sponsor and Energy Champion

I. END USER-appointed WEC "Executive Sponsor":

Name of Executive Sponsor: Jenifer Galatas
(please print)

Title: Principal Engineer, Facility Manager

Phone: 425-257-8229

Email Address: JGalatas@everettwa.gov

II. END USER-appointed WEC "Energy Champion":

Name of Energy Champion: Scott Weirich
(please print)

Title: Project Coordinator

Phone: 425-257-6790

Email Address: sweirich@everettwa.gov

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Addendum 1: WEC Program Glossary

1. Energy Champion - The person appointed by the End User to oversee the implementation and compliance for WEC Program requirements under this Agreement. This person will also be the End User's primary contact.
2. Energy Smart Industrial (ESI) Program Partner – The BPA contractor that administers the Energy Smart Industrial Program in collaboration with BPA.
3. Executive Sponsor - The management-level coordinator of END USER's WEC activities. The Executive Sponsor's primary responsibilities involve establishing energy savings goals, assigning personnel and monetary resources, and conducting management reviews of energy performance and team activities. The Executive Sponsor will assign an Energy Champion and supporting staff to attend workshops and carry out implementation activities.
4. Performance Tracking System (PTS) – This system, installed by the end user, tracks and communicates meter-level energy consumption of whole facilities, and/or designated electro-mechanical subsystems. The ESI Program Partner provides design guidance for the PTS, and compiles a PTS Verification Report that documents the functionality and associated costs.
5. WEC Action Items – Low-cost energy saving activities identified and recommended by the WEC Provider or END USER which produce cost-effective energy savings.
6. WEC Completion Report – This report, usually prepared by the WEC Provider and/or ESI Program Partner, summarizes the WEC Program implementation activities and verified energy savings. If applicable, the report will also include records of WEC Action Item implementation costs and PTS maintenance costs.

Table 1. WEC Funding Amounts and Milestones: 2 Year Program Agreement

Payment No.	Incentive Formula	Incentive Cap	Milestone
Payment #1: PTS Setup 1 (Optional)	1.1 Payment Calculation as ***Lesser of***: a. Documented PTS costs; or b. $10,000.00, if plant baseline is less than 4,000,000 kWh annual consumption	$20,000.00 Total Program PTS cap	END USER purchases and installs BPA and UTILITY approved PTS
Payment #2: End Year 1 Sustained Savings and PTS Maintenance	2.1 If supporting invoices are not provided, $0.025 per kWh of actual verified "non-capital" energy savings identified in the "Year 1" WEC Completion Report* **	$50,000.00 Total Program Incentive Cap for Energy Savings Plus for Years 1 and 2 combined	BPA reviews and approves "Year 1" SEM Completion Report.* (All capital energy efficiency projects savings and incentives are recognized under the UTILITY standard rebate program.)
	2.2. PTS Maintenance Payment, for documented Year 1 PTS costs.	PTS Maintenance payment funding, subject to $20,000.00 Total Program PTS cap	
Payment #3: Year 2 Sustained Savings and PTS Maintenance	3.1 If supporting invoices are not provided, $0.025 per kWh of actual verified "non-capital" energy savings identified in the "Year 2" WEC Completion Report* **	$50,000.00 Total Program Incentive Cap for Energy Savings for Years 1 and 2 combined	BPA reviews and approves "Year 2" SEM Annual Completion Report.* (All capital energy efficiency projects savings and incentives are recognized under the UTILITY standard rebate program.)
	3.2. PTS Maintenance Payment, for documented Year 2 PTS costs	PTS Maintenance payment funding, subject to $20,000.00 Total Program PTS cap	
Overall Cap	*$20,000.00 Total Program Incentive Cap for Performance Tracking System (PTS) funding and $50,000.00 Total Program Incentive Cap for Energy Savings*	$70,000.00 Overall Incentive Cap	

* WEC Completion Reports are prepared at the conclusion of each year of a two-year 'WEC Performance Period.' The WEC Performance Period starts:

a. No earlier than the BPA kick-off workshop (if applicable), and

b. No later than either (i) the first day of the first full monthly billing cycle following the kick-off workshop (if applicable), or (ii) when the END USER begins Action Item implementation.

**To receive payment at the rate of $0.075 per kWh up to 70% of eligible implementation costs either year, all supporting invoices and internal labor hour records must be provided for that year. Otherwise, annual performance incentives will be paid at the $0.025 per kWh rate.

The total incentives paid under this Agreement shall not exceed $70,000.00.

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Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Interlocal Agreement with Snohomish County Public Utility District No. 1 governing participation in the Wastewater Energy Cohort Program

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Public Works
	Consent	Contact Person	Scott Weirich
X	Action	Phone Number	425-257-6790
	First Reading	FOR AGENDA OF	March 29, 2017
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Water Pollution Control Facility		Interlocal Agreement	Public Works

Amount Budgeted	$0	
Expenditure Required	$0	Account Number(s): WO 20170457
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Snohomish County Public Utility District No. 1 (PUD) has initiated the Wastewater Energy Cohort Program. PUD and its partner, Energy Systems Industrial (ESI), will provide training to Everett Water Pollution Control Facility (EWPCF) staff and data analysis regarding energy conservation. They will also provide monetary incentives for energy savings.

The attached Interlocal Agreement describes the responsibilities of the PUD and EWPCF staff regarding participation in the program.

EWPCF responsibilities:
- Attend five training sessions
- Provide water quality data to PUD and ESI

PUD and ESI responsibilities:
- Provide training in energy management
- Model energy use at the EWPCF
- Pay incentives for energy savings (up to $50,000) and monitoring equipment (up to $20,000)

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign an Interlocal Agreement with Snohomish County Public Utility District No. 1 governing participation in the Wastewater Energy Cohort Program.

Council approved on 3/29/2017