

Change a Light, Change the World

CFL Markdown Promotion Agreement

1. Service Contract

This Agreement is made and entered into by and between «UtilityName», the Client, and Portland Energy Conservation, Inc. (PECI), the Consultant, listed below for specified services provided by the Consultant to the Client. This Agreement shall remain in force only for the duration of the period specified below, unless extended in accordance with this Agreement (Term). All obligations incurred under this Agreement shall survive the Term until satisfied.

Project Name	Change a Light, Change the World (Change-a-Light Northwest)
Contract Period	«StartDate» – «EndDate»
Client Name	«UtilityName»
Client Representative	«Client_Representative»
Telephone Number	«ClientPhone»
Address	«ClientAddress»
City, State Zip	«ClientCity», «ClientState» «ClientZIP»
Consultant Name	Portland Energy Conservation, Inc. (PECI)
Telephone Number	(503)248-4636
Address	1400 SW 5 th Ave. #700
City, State, Zip	Portland, Oregon 97201
Taxpayer Identification Number	93-0770824

2. Term

The term of this Agreement (Term) shall commence on «StartDate» and continue in effect until «EndDate», unless the Parties agree in writing to extend the Term, or unless this Agreement is earlier terminated in accordance with the Early Termination provisions below.

3. Services

This Agreement covers the services specified in Attachment A Scope of Work, which is hereby included and made a part of this Agreement. The Consultant agrees to perform the services specified in Attachment A in the manner and within the time specified therein. Except as expressly provided elsewhere in this Agreement, any and all modifications or revisions to Attachment A, including, but not limited to, additions, deletions and extensions must be in writing and signed by both parties.

4. Billing and Payment

The Consultant shall be compensated by «UtilityName» for the performance of those services described in Attachment A, which is hereby included and made a part of this Agreement.

To ensure payment within 30 days after receipt by «UtilityName», the invoice for each month must be submitted to «UtilityName» within 10 days of receipt of retail sales data by PECI for the month prior.

Submit all invoices to:

Attn: «Client_Representative»
«UtilityName»
«InvoiceAddress»
«ClientCity», «ClientState» «ClientZIP»

5. Documentation

The Consultant shall maintain records documenting all fees and expenses in excess of \$5.00, incurred either by Consultant or any subcontractor of Consultant in the performance of this Agreement. During regular business hours and upon reasonable notice, «UtilityName», or its designee, shall have the right to inspect and audit all records required to be maintained under this Agreement.

6. Insurance

The Consultant, and any subcontractor engaged by Consultant in its performance of this Agreement, shall carry and maintain fully paid commercial general liability, automobile liability and workers compensation insurance. All policies shall be written only by insurers admitted to do business in «InsuranceState» and having a rating of at least “A” and a financial rating of at least “VIII” on the most current edition of Best’s Key Rating Guide or comparable rating by another generally recognized rating agency. All policies shall be endorsed to (a) specify «UtilityName» as an additional insured to the full extent of its right to indemnification under this Agreement, and (b) provide that «UtilityName» shall be given no less than thirty (30) days advance written notice of cancellation or material change in coverage. Certificates of insurance shall be sent to «UtilityName» before work begins.

1. Consultant shall obtain the following minimum insurance coverage (Required Insurance(s)) prior to the Effective Date, at its expense, and keep the Required Insurances in effect during the Term (except with respect to Professional Liability Insurance, when they shall be kept in effect for a period of the Term plus two years);
2. Workers’ Compensation Insurance in compliance with statutory requirements;
3. Commercial General Liability Insurance (including contractual liability), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
4. Professional Liability Insurance, including errors and omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by «UtilityName» or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
5. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Consultant’s vehicles, whether owned, hired, or non-owned, assigned to, or used by Consultant in connection with the Services; and
6. Umbrella coverage in excess of the Workers’ Compensation Coverage B (Employers’ Liability), Commercial General Liability.

The Required Insurances shall be with insurance companies admitted to do business in the state of «InsuranceState» and rated “A” or better by Best’s Insurance Rating. Consultant shall furnish «UtilityName» with certificates of insurance for each of the Required Insurances.

The Commercial General Liability, Commercial Automobile Liability, and Umbrella Coverage shall (i) name «UtilityName», its directors, officers, and employees, as additional insured, (ii) provide that it is primary insurance with respect to the interests of «UtilityName» and that any insurance maintained by «UtilityName» is excess and not contributory, (iii) include a cross-liability and severability of interest clause, and (iv) shall include coverage for Hazardous Substances.

In the event Contractor fails to maintain, or require its subcontractors to maintain, insurance policies in compliance with this provision, «UtilityName» may in its discretion either purchase such insurance coverage and charge the premium to Contractor or treat such failure as an event of default by Contractor and terminate this Agreement for breach of contract.

7. Governing Law, Venue and Attorney's Fees

The laws of the State of «InsuranceState» shall govern this agreement. Exclusive venue in case legal suit or action is instituted to enforce compliance with any terms, covenants, or conditions of this agreement shall lie in «ClientCounty» County, «InsuranceState». Both parties agree to submit to the personal jurisdiction of any court of competent subject matter jurisdiction in «ClientCounty» County, «InsuranceState». In the event of legal suit or action, including any appeals there from, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall reimburse the prevailing party for its reasonable attorney fees and costs incurred in the suit or action including investigation costs, expert witness fees and all costs of depositions. If any part of this agreement is found to be in conflict with applicable laws, such parts shall be inoperative, null and void so far as it is in conflict with said laws, but the remainder of this agreement shall be in full force and effect.

8. Good Faith Negotiation/Mediation

Prior to filing suit or initiating arbitration on any dispute, which arises between the Parties under or relating to this Agreement, the Parties agree to attempt to resolve the dispute through good faith negotiation. If the dispute cannot be resolved through good faith negotiation, the Parties agree to hire an independent, trained and mutually acceptable mediator to mediate the dispute. The cost of the mediator will be shared equally by the Parties. The mediation shall be conducted in «ClientCity», «InsuranceState».

9. Suspension of Work

Suspension by «UtilityName»

«UtilityName» may suspend, in writing, all or a portion of Consultant's services under Attachment A in the event unforeseen circumstances make normal progress in the performance of the Consultant's work inadvisable in the opinion of «UtilityName». Consultant may request that the work be suspended by notifying «UtilityName», in writing, of circumstances which are interfering with normal progress of the work. The time for completion of the remaining work shall be extended by the number of days the work is suspended by «UtilityName», unless both parties can mutually agree upon a new completion time. In the event the period of suspension exceeds 90 days, the terms of this Agreement shall be subject to renegotiation; provided,

however, that if such renegotiation of a mutually acceptable replacement contract has not occurred within 180 days after suspension (Renegotiation Period), then either party may terminate this Agreement in accordance with the early termination provision hereof, provided further, that the failure to renegotiate this Agreement within the Renegotiation Period shall not be construed as a breach of the Agreement by either Party.

Suspension by Contractor

Contractor may suspend, in writing, all or any portion of its services under this Agreement, but only if and to the extent «UtilityName» fails to make timely payment in accordance with the terms of this Agreement. «UtilityName» shall have a period of sixty (60) days from the date on which payment was due (Cure Period) within which to satisfy any arrearages in payment. Contractor shall resume performance of any suspended services upon receipt of payment of any arrearages from «UtilityName» within the Cure Period.

10. Early Termination

Early Termination of Agreement Prior to Expiration of the Term

Either party shall have the right, but not the obligation, to terminate this Agreement, on sixty (60) days written notice, in the event the other party's service or performance fails to conform to the requirements of this Agreement. Contractor shall have the right, but not the obligation, to terminate this Agreement, effective upon expiration of the Cure Period, in the event «UtilityName» fails to pay any arrearage within the Cure Period. Either Party shall have the right but not the obligation, to terminate this Agreement in the event work is suspended under this Agreement for a period in excess of 90 days and no renegotiation of this Agreement has occurred within the Renegotiation Period. Any right of early termination shall be in addition to, not in replacement of, any and all rights and remedies a party may have for breach of the Agreement by the other Party.

11. Subcontractors

Consultant may contract with one or more qualified subcontractors (Subcontractor Agreement) to perform a portion of the services specified in the Scope of Work; provided, however, that Contractor shall remain solely responsible to «UtilityName» for all performance under this Agreement and, provided further, that «UtilityName» shall have no responsibility for the review or supervision of the work of any subcontractor or for any payment to any subcontractor. All subcontractor agreements shall require the subcontractor to comply with the invoicing, insurance, suspension of work, audit, documentation, confidentiality and return of records obligations imposed on Contractor by this Agreement. No subcontractor shall be deemed to be a third party beneficiary of this Agreement or to have any other rights under this Agreement

12. Relationship of Parties

Consultant is an independent contractor, and this Agreement is not intended to form a partnership or joint venture between the Parties. Individuals employed by Consultant are not employees or agents of «UtilityName», nor are Consultant's subcontractors employees or agents of «UtilityName». Each Party is solely responsible for payment of compensation to its employees and personnel and will withhold and pay to the appropriate authorities all taxes, contributions, and assessments imposed or required under all laws with respect to payments. The Consultant will require these terms in all agreements with subcontractors for work undertaken for this Agreement.

13. Return of Records

On termination of the contract, the Consultant will consult with the project manager at «UtilityName» about whether pertinent records should be returned. If requested, the Consultant will deliver to «UtilityName» all records, reports, data memoranda, notes, models or publications whether electronic or hard-copy, equipment and supplies of any nature, and receipts for any and all billing made to «UtilityName» that are in possession or under control of the Consultant, prepared or acquired in the course of the contract with «UtilityName». Further, the Consultant agrees not to keep or withhold such information or data, or reproductions of such information or data that relate to the business activities of «UtilityName» or to parties in a contract relationship with «UtilityName». Alternatively, if the return of records and equipment or supplies is not requested, Consultant agrees to retain these items for three years after the completion of this contract and to notify the «UtilityName» project manager at the end of that time before disposing of them. Consultant shall include a provision substantially identical to the foregoing in all its Subcontractor Agreements.

14. Indemnification

The parties hereto agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury and/or damages arising from or in any way connected to the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

The Parties specifically agree that the provisions of this Section also apply to any claim of injury or damage to the persons or property of the Consultant's employees. Consultant acknowledges and agrees that, as to such claims, the Consultant, with respect to «UtilityName», hereby waives any right of immunity which Consultant may have under industrial insurance (Title 51 RCW as amended and under any substitute or replacement statute). This waiver was specifically negotiated by the Parties, is solely for the benefit of the Parties and their successors and assigns, and is not intended as a waiver of Consultant's right of immunity under said industrial insurance for any other purpose.

15. Force Majeure

Notwithstanding anything contained in this Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result from acts of God, acts of civil and military authority, acts of public enemy, war, or any like cause beyond the Parties' reasonable control.

16. Severability

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

17. Notices

Notices required to be made under this Agreement shall be served personally, by facsimile transmission, by overnight courier to the address shown above, or by email, with a duplicate sent by certified mail, return receipt requested. Notice shall be effective only upon receipt by the party being served.

18. Effective Date and Term

This Agreement, including its attachments, shall be effective immediately upon execution by both parties.

«UtilityName»

PECI

Signature

Signature

Name

Name

Date

Date

Attachment A

Scope of Work

Portland Energy Conservation, Inc. (PECI) will conduct the following tasks for «UtilityName» in support of a compact fluorescent (CFL) markdown promotion in connection with Bonneville Power Administration's region-wide *Change a Light, Change the World* promotion, during the effective dates «StartDate» – «EndDate».

Task 1: Setup and Kickoff

- PECO will design and produce retail Point of Purchase (POP) materials for participating retail locations, including those in «UtilityName» territory. Where appropriate, POP materials will include a logo specific to «UtilityName».
- Marketing materials will be delivered to stores. Field representatives will support participating retail stores in «UtilityName» territory and provide on-site merchandising and sales associate training.

Task 2: Allocations and Estimates

- Retail locations in the program identified as selling bulbs to «UtilityName» customers will be assigned a percentage allocation which shall represent the share of sales attributed to «UtilityName» customers, and consequently the share of sales paid by «UtilityName».
- «UtilityName» is required to review these allocations and make recommendations for changes before sales are invoiced.
- PECO will provide an estimate of potential sales for the effective dates to «UtilityName», using the determined store allocations.

Task 3: Sales Data Tracking

- Program staff will receive retail sales reports from partnering manufacturers and/or retailers, and are specific to individual retail locations.
- Program staff will enter sales reports into the tracking database.

Task 4: Summary Report and Invoicing

- «UtilityName» will receive detailed electronic reports of sales once a month. Sales will be broken out by retailer and by individual product. This data will also be available in a hard copy format if requested.
- Invoices for CFL sales and administrative costs per unit sold within the prior month will be sent to «UtilityName» monthly. Invoicing is dependent upon PECO receiving sales data reports from manufacturer/retailer partners in a timely manner, due on the 15th of each month. However, «UtilityName» will be invoiced by PECO within 10 working days of receipt of sales data.
- Custom reporting is available upon request.

- «UtilityName» will be invoiced for markdown and administration costs per CFL sold, according to lamp type as follows:

Product Mix			
Lamp Type	Markdown	Administration	Total Cost
3-Way	\$ 2.25	\$ 0.40	\$ 2.65
A-Lamp	\$ 1.75	\$ 0.40	\$ 2.15
CC Candelabra	\$ 2.25	\$ 0.40	\$ 2.65
CFL Candelabra	\$ 1.75	\$ 0.40	\$ 2.15
Daylight	\$1.75/1.00	\$ 0.40	\$2.15/1.40
Dimmable Reflector	\$ 2.25	\$ 0.40	\$ 2.65
Globe	\$ 1.75	\$ 0.40	\$ 2.15
Outdoor	\$ 2.25	\$ 0.40	\$ 2.65
Reflector	\$2.25/1.75	\$ 0.40	\$2.65/2.15
T2 Twist	\$ 1.25	\$ 0.40	\$ 1.65

Task 5: Bulk Purchasing

- «UtilityName» can request bulk purchase of qualified CFL bulbs in quantities over 200 units for delivery to specified locations..
- «UtilityName» will be invoiced by PECEI for full cost of bulbs plus a \$0.40 per bulb administrative fee.
- Actual cost, quantity and details of a bulk purchase will be determined at the time of request.

Budget:

«UtilityName» commits to fund (**check one and fill in blank**) the following, based upon proof of sales by store at participating retailers in the attached store list:

- A maximum of _____ promotional CFLs sold for the duration of the promotion.
- Up to \$_____ in total costs for promotional CFLs sold for the duration of the promotion.
- All promotional CFLs sold for the duration of the promotion.

«UtilityName»

Portland Energy Conservation, Inc.

Initial: _____

Initial: _____

Date: _____

Date: _____