

Contract No. 07PB-«#####»

RESIDENTIAL EXCHANGE
INTERIM RELIEF AND STANDSTILL AGREEMENT

by and between
UNITED STATES OF AMERICA DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
«FULL NAME OF CUSTOMER»

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This RESIDENTIAL EXCHANGE INTERIM RELIEF AND STANDSTILL AGREEMENT (“Agreement”) is executed by **«FULL NAME OF CUSTOMER»** (“**«Customer Name»**”), an investor-owned utility organized under the laws of the State of _____, and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (“BPA”). **«Customer Name»** and BPA are sometimes referred to herein individually as “Party” and together as “the Parties.”

RECITALS

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WHEREAS, Section 5(c) the Northwest Power Act establishes the right of Pacific Northwest electric utilities to participate in the Residential Exchange Program that provides wholesale power cost benefits of the Federal Columbia River Power System for residential and small farm consumers; and

WHEREAS, BPA and «Customer Name» entered into a [2000][2001] Agreement relating to the determination of the Parties' rights and obligations under the Residential Exchange Program for a period commencing October 1, 2001; and

WHEREAS, recently the United States Court of Appeals for the Ninth Circuit has issued a number of opinions, including *Portland General Electric, et al. v. Bonneville Power Administration*, *Golden Northwest Aluminum, Inc. v. Bonneville Power Administration* ("May Opinions"), *Public Utility Dist. No. 1 of Snohomish County Wash. v. Bonneville Power Administration*, and *Public Util. Dist. No. 1 of Grays Harbor v. Bonneville Power Administration* (collectively, including the May Opinions, "Opinions"); and

WHEREAS, as a consequence of BPA's uncertainty regarding its authority to continue payments under the [2000][2001] Agreement **[and the Financial Settlement Agreement]** after the May Opinions, BPA temporarily suspended payments to «Customer Name» under such agreement[s] effective May 21, 2007 (the "Suspension Date"), while acknowledging that the temporary suspension did not constitute a waiver of, and was subject to, any statutory, contractual or other rights and obligations of the Parties and that such temporary suspension was without prejudice to the issue of whether the suspended Residential Exchange Program benefit amounts must at some later point be paid (or credited); and

WHEREAS, «Customer Name» along with other Investor-Owned Utilities and state public utility commissions filed on July 18, 2007, petitions for rehearing and rehearing *en banc* of the May Opinions with the Ninth Circuit Court of Appeals (the "Rehearing Petitions"), which petitions were denied October 5, 2007; and

WHEREAS, the time for filing petitions for *writs of certiorari* with respect to the May Opinions has not expired; and

WHEREAS, the effects of the Opinions are currently uncertain; and

WHEREAS, because of the temporary suspension of payments by BPA, the retail electric power bills of residential and small farm consumers of certain Pacific Northwest electric utilities, including «Customer Name», have increased substantially and, in some cases, are causing economic hardship to such consumers; and

WHEREAS, the Parties agree that the exact amount of Residential Exchange Program benefits that «Customer Name» will ultimately receive for its residential and small farm consumers for Fiscal Year 2008 will not be known with certainty for a considerable period of time; and

WHEREAS, «Customer Name» offers to BPA to sell power to the Administrator in 2008 pursuant to section 5(c)(1) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839c(c)(1); and

Deleted: WHEREAS, while the exact amount of such benefits is not known with certainty at this time, BPA believes there is substantial evidence supporting the conclusion that it is more likely than not that «Customer Name» will ultimately be entitled to receive Residential Exchange Program benefits during Fiscal Year 2008 for its residential and small farm consumers; and

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WHEREAS, BPA has determined it would be inequitable to the residential and small farm consumers of «Customer Name» for BPA to continue suspending all Residential Exchange Program benefit payments pending a final determination of the exact amount of payments due and owing to «Customer Name» for the benefit of such consumers for Fiscal Year 2008; and

WHEREAS, by this Agreement, the Parties reserve and do not waive any and all statutory, contractual or other rights and obligations regarding the appropriate level of Residential Exchange Program benefits, including, but not limited to, the amount of such benefits to be provided for «Customer Name»'s residential and small farm customers for all or part of the Benefit Period.

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NOW, THEREFORE, in consideration of the promises and the respective representations hereinafter contained, the Parties hereby promise and agree as follows:

1. TERM

This Agreement shall become effective on the date of execution by the Parties ("Effective Date") and shall continue through the end of the Term. All obligations incurred hereunder shall be preserved until satisfied.

2. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- (a) "Benefit Period" means the period beginning on October 1, 2001, and continuing through September 30, 2008.
- (b) "BPA True-up Payment Amount" means the amount, if any, by which the Interim Period Payment made to «Customer Name» is less than the Definitive Benefit Amount.
- (c) "Contract Year" means the period during the Term of this Agreement, beginning on the first day of the first month following the Effective Date.
- (d) "«Customer Name» True-up Payment Amount" means the amount, if any, by which the Definitive Benefit Amount is less than the Interim Period Payment made to «Customer Name».
- (e) "Deemer Account" means a separate account established pursuant to Section 10 of Contract No. _____, the 1981 Residential Purchase and Sale Agreement between «Customer Name» and BPA that identifies a monetary payment plus interest that BPA asserts would have been owed to BPA by «Customer Name» if «Customer Name» had not "deemed" its Average System Cost equal to the PF Exchange Rate.

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(f) “«Customer Name» Benefit Amount” means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that the «Customer Name» is entitled to, if any, as determined by the BPA Administrator pursuant to a final, judicially reviewable, Definitive Payment ROD, subject to any final court order with respect thereto after all judicial review thereof has been exhausted.

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(g) “Definitive Benefit Amount” means the «Customer Name» Benefit Amount, as determined by the BPA Administrator in the Definitive Payment ROD, subject to any final court orders with respect thereto after all judicial review thereof has been exhausted, provided however, that in the event the [2000][2001] Agreement [and Financial Settlement Agreement] are not judicially invalidated then “Definitive Benefit Amount” means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that the «Customer Name» is entitled to pursuant to the [2000][2001] Agreement [and Financial Settlement Agreement], if any, as determined by the BPA Administrator and subject to the Opinions, if and as applicable, and any other final court orders with respect to such determination by the BPA Administrator and such Opinions after all judicial review thereof has been exhausted.

Deleted: <#>“Definitive Settlement Benefit Amount” means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that the «Customer Name» is entitled to pursuant to the [2000][2001] Agreement [and Financial Settlement Agreement], if any, as determined by the BPA Administrator and subject to the Opinions, if and as applicable, and any other final court orders with respect to such determination by the BPA Administrator and such Opinions after all judicial review thereof has been exhausted.¶

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(h) “Definitive Payment ROD” means a final record of decision in which the BPA Administrator will make, in addition to any other final decisions, a final determination on the Definitive Benefit Amount. The underlying proceeding will not be considered closed for purposes of there being final decisions until the Administrator issues the Definitive Payment ROD.

(i) “True-up Payment Event” has the meaning specified in Section 8 of this Agreement.

(j) “Effective Date” has the meaning specified in Section 1 of this Agreement.

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(k) “Expiration of Stay Date” means the day on which BPA issues the earlier of,

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(1) the Definitive Payment ROD;

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(2) any other final decision regarding the level of payments under the Residential Exchange Program to which the Investor Owned Utilities are entitled for any part of the Benefit Period (not including Residential Exchange Interim Relief and Standstill Agreements); or

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(3) a final BPA decision regarding the rates to be charged «Customer Name» for any portion of the Benefit Period or thereafter.

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(l) “Fiscal Year 2008” means the period beginning on October 1, 2007 and continuing through September 30, 2008.

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(m) “Interest Accrual Date” means the date on which the Interim Period Payment is made to «Customer Name». Deleted: Formatted: Bullets and Numbering

(n) “Interim Period Payment” means the payment amount specified in Exhibit A. Formatted: Bullets and Numbering

(o) “Investor -Owned Utilities” means Avista Corporation, Idaho Power Company, NorthWestern Corp., PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc., or their respective successor entities. Formatted: Bullets and Numbering

(p) “May Opinions” has the meaning specified in the recitals. Formatted: Bullets and Numbering

(q) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501. Formatted: Bullets and Numbering

(r) “Opinions” has the meaning specified in the recitals. Formatted: Bullets and Numbering

(s) “Residential Exchange Program,” or “REP,” means the purchase and sale obligations established under Section 5(c) of the Northwest Power Act. Formatted: Bullets and Numbering

(t) “Residential Load” means the load eligible for benefits under this Agreement, as such load is defined in Exhibit B. Formatted: Bullets and Numbering

(u) “Standstill and Interim Relief Payment Agreements” means the agreement(s) of that title executed by BPA and some or all of its public preference customers. Formatted: Bullets and Numbering

(v) “2000 Agreement” means BPA contract No. 01PB-_____ between the Parties (as such agreement may have been supplemented or amended by the Agreement Regarding Fiscal Year 2003 Deferral Amount (Contract No. 03PB-_____)) between the Parties), as such agreements may have been heretofore amended. *[Avista, NorthWestern, PGE]* Deleted: or hereafter

“2000 Agreement” means BPA contract No. 01PB-_____ between the Parties (as such agreement may have been supplemented or amended by the Agreement Regarding Conditional Deferral of Reduction of Risk Discount (Contract No. 02PB-_____)) between the Parties and the Agreement Regarding Fiscal Year 2003 Deferral Amount (Contract No. 03PB-_____)) between the Parties), as such agreements may have been heretofore amended. Deleted: or hereafter
[PacifiCorp]

“2001 Agreement” means BPA contract No. 01PB-10885 between the Parties (as such agreement may have been supplemented or amended by the Agreement Regarding Conditional Deferral of Reduction of Risk Discount (Contract No. 02PB-11156) between the Parties and the Agreement Regarding Fiscal Year 2003 Deferral Amount (Contract No. 03PB-11251) between the Parties), as such agreements may have been heretofore amended. *[Puget]* Deleted: or hereafter

(w) “Financial Settlement Agreement” means BPA contract No. 01PB-10854 between the Parties, as such agreement may have been heretofore amended. *[PacifiCorp]*

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(x) “Term” means the period from and including the Effective Date and continuing until all true-up payments have been made pursuant to Section 9.

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(y) “True-up Effective Date” has the meaning specified in Section 8 of this Agreement.

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3. **EXHIBITS**

Exhibits A and B are attached hereto and made a part of this Agreement.

4. **BPA DUTIES AND RESPONSIBILITIES**

BPA shall make the Interim Period Payment as specified in Exhibit A to «Customer Name». The amount of the Interim Period Payment shall be as specified in Exhibit A. Payment shall be by electronic funds transfer pursuant to instructions provided to BPA by «Customer Name». Payment shall be made as soon as practicable after execution of this Agreement.

5. **«CUSTOMER NAME»’S DUTIES AND RESPONSIBILITIES**

(a) **Stay of Litigation Activities**

In consideration for the Interim Period Payment, and subject to Section 7 of this Agreement, «Customer Name» agrees to abstain until the Expiration of Stay Date from filing any claim, petition or other legal action in any court or administrative body (other than BPA’s administrative proceedings) that:

- (1) Challenges BPA’s decision to enter into this Agreement or any other Residential Exchange Interim Relief and Standstill Agreement(s) executed by BPA and any other Investor-Owned Utility;
- (2) Challenges BPA’s decision to enter into the Standstill and Interim Relief Payment Agreement(s) executed by BPA and any public preference customer; or
- (3) Asserts that BPA is in breach of contract as a result of suspending, as of the Suspension Date, payments (including conservation and renewable discounts and any other credits) under the [2000] [2001] Agreement **[and Financial Settlement Agreement]**.

(b) Nothing in this Agreement shall prohibit «Customer Name» from seeking relief under any surplus power sales or transmission agreements with BPA for any other matters unrelated to the matters described in Section 5(a) above.

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(c) Nothing in this Agreement shall prevent «Customer Name» from filing any documents or appearing in any court or administrative proceeding in order to seek to contest the Opinions or their effect, or to respond in any manner or

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take any action that «Customer Name» deems appropriate with regard to any actions taken, or arguments or claims raised, by others with respect to the Opinions or their effect.

- (d) This Agreement and the Standstill and Interim Relief Payment Agreements executed by BPA and any preference customer do not constitute final decisions, including but not limited to final decisions on 2008 Residential Exchange benefits or the level of Residential Exchange Program costs that should or could be included in rates.

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6. REPRESENTATIONS AND ACKNOWLEDGEMENTS REGARDING INTERIM PERIOD PAYMENT

Each Party hereby represents and acknowledges its agreement that: (a) the Interim Period Payment is an interim measure designed to mitigate the consequence of BPA’s decision to temporarily suspend payments to the Investor-Owned Utilities as a result of BPA’s uncertainty regarding its authority to continue payments under the [2000][2001] Agreement [and the Financial Settlement Agreement] after the May Opinions were issued; (b) the Interim Period Payment is not intended to be, nor shall it be interpreted to be, a final and definitive determination, payment, or settlement of any REP amounts (or of any payments under the [2000][2001] Agreement [and the Financial Settlement Agreement]), if any, that are finally determined due and payable to «Customer Name» for the benefit of its Residential Load during Fiscal Year 2008; and (c) the Interim Period Payment made pursuant to this Agreement shall be subject to the reconciliation and true-up process described in Section 9 below. This Section 6 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

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7. NO WAIVER OF RIGHTS

Notwithstanding anything in this Agreement to the contrary, it is hereby agreed that neither Party has waived or is waiving, either by virtue of entering into this Agreement, by making or accepting payments under this Agreement, or otherwise, any arguments or claims it has made or may make, or any rights or obligations it has or may have, regarding the [2000][2001] Agreements [or the Financial Settlement Agreement] or the calculation or implementation of Residential Exchange Program benefits for any period of time whether within or outside of the Benefit Period, and each Party hereby expressly reserves all such arguments and rights. This Section 7 shall survive the termination or the expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

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8. TRUE-UP PAYMENT EVENTS

The occurrence of one or more of the events identified below (“True-up Payment Event”) shall result in the true-up of the Interim Period Payment pursuant to Section 9 of this Agreement.

- (a) The United States Court of Appeals for the Ninth Circuit, or other court of competent jurisdiction, issues a final order or opinion holding the [2000][2001]

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Agreement **[and the Financial Settlement Agreement]** is consistent with law (or dismisses any challenge thereto) and BPA ceases any suspension of payments due under the **[2000][2001]**Agreement **[and the Financial Settlement Agreement]**; or

(b) BPA issues the Definitive Payment ROD.

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BPA shall provide written notice to «Customer Name» of such True-up Payment Event and shall specify in such notice the effective date of the True-up Payment Event (“True-up Effective Date”); *provided, however*, that such specified date shall not be a date earlier than three days after receipt by the other Party of such written notice. This Section 8 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

9. TRUE-UP CALCULATION AND PAYMENT

The Parties hereby agree that on the True-up Effective Date the Interim Period Payment amount paid under this Agreement shall be subject to reconciliation and true-up in accordance with this Section 9.

(a) Calculation of True-up Payment

BPA shall calculate the difference, if any, between the Interim Period Payment made to «Customer Name» and the Definitive Benefit Amount. If there is any difference between the Definitive Benefit Amount and the Interim Period Payment, then the following provisions shall apply:

- (1) If there is a BPA True-up Payment Amount, then BPA shall pay «Customer Name» such amount, plus interest. BPA may elect to make such payment to «Customer Name» in a lump sum or in equal monthly amounts (including interest) for a period of seven (7) months. Payment shall be by electronic funds transfer pursuant to instructions provided to BPA by «Customer Name».
- (2) If there is a «Customer Name» True-up Payment Amount, then BPA shall set-off such amount, plus interest, against future payments that «Customer Name» is entitled to under the REP as follows:
 - (A) During a three (3) year period immediately following the commencement of set-offs pursuant to Section 9(b) below, set-offs shall be made at such times and in such amounts as are mutually agreed in writing by BPA and «Customer Name»; or
 - (B) In the absence of such agreement, then BPA shall make such set-offs until the amount of set-offs is equal to the «Customer Name» True-up Payment Amount (plus interest). BPA agrees to make a good faith effort to amortize such set-offs over a three (3) year period immediately following the commencement of set-offs pursuant to Section 9(b) below and, if practicable, to do so in

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a fashion that amortizes such set-offs in equal monthly amounts; *provided, however*, that in no event shall any monthly set-off amount be greater than the payment that «Customer Name» is entitled to from BPA under the REP for that month.

- (C) Set-offs under Section 9(a)(2)(A) or (B) shall continue until the «Customer Name» True-up Payment Amount (plus interest) has been set-off in its entirety, or for three (3) years, whichever occurs first. If, at the end of such three (3) year period, the «Customer Name» True-up Payment Amount (plus interest) has not been set-off in its entirety, then «Customer Name» shall pay to BPA any remaining portion. Such payment(s) shall begin within thirty (30) days following the expiration of the three (3) year period and be made in equal monthly amounts (including interest) over the following twelve (12) months.

- (3) The interest specified above in this Section 9 on the difference, if any, between the Definitive Benefit Amount and the Interim Period Payment as calculated in Sections 9(a)(1) or (2) shall be simple interest computed on the declining balance from the Interest Accrual Date until paid. The interest rate applied to such outstanding balances shall equal the one (1) year annual rate of interest posted under the title “Daily Treasury Yield Curve Rates” as published on the U.S. Treasury Department’s website at 3:30pm Eastern Prevailing Time on the Interest Accrual Date. The interest rate is available at the following website:
www.treasury.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.

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(b) Commencement of True-up Set-offs or Payments

Payments or set-offs under this Section 9 shall commence in accordance with the following provisions:

- (1) If no petition or other legal action is filed challenging BPA’s determination of the Definitive Benefit Amount, then payments or set-offs under Section 9(a) shall commence upon the later of:
 - (A) Ninety-five (95) calendar days after the publication of the Definitive Payment ROD; or
 - (B) If the Definitive Payment ROD includes final rate determinations subject to review by the Federal Energy Regulatory Commission (FERC), then ninety-five (95) calendar days after the issuance of an order from FERC approving BPA’s rates on a final basis.
- (2) If one or more petitions or other legal actions are filed challenging BPA’s determination of the Definitive Benefit Amount, then payments or set-offs under Section 9(a) shall commence thirty (30) days after the

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Definitive Benefit Amount is finally sustained or affirmed by a final, non-appealable order by a court of competent jurisdiction.

- (c) In addition to using the true-up provision described in Section 9(a) above, the Parties further agree and acknowledge that if a Court of competent jurisdiction remands, vacates or otherwise reverses BPA's decision to enter into this Agreement, then the Parties will work cooperatively and in good faith together and take such actions as are necessary to conform this Agreement to such order(s).

Any payment or set-off rights and obligations arising under this Section 9 shall survive the expiration or termination of this Agreement. This Section 9 shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

10. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, the Interim Period Payment received by «Customer Name» from BPA shall be passed through, in full, to each residential and small farm consumer, as either: (1) an adjustment in applicable retail rates; (2) monetary payments; or (3) as otherwise directed by the applicable State regulatory authority.
- (b) The Interim Period Payment shall be distributed by «Customer Name» to the Residential Load in a timely manner as set forth in this Section 10; *provided, that*, it is specifically acknowledged and agreed that distributions to the Residential Load may be made by «Customer Name» in advance of its receipt of Interim Period Payment from BPA and that the Interim Period Payment may be used to set-off distributions to the Residential Load made by «Customer Name» prior to the Effective Date. If the Interim Period Payment is less than \$600,000, then «Customer Name» may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.
- (c) Interim Period Payment shall be passed by «Customer Name» through consistent with procedures developed by «Customer Name»'s State regulatory authority(s). Interim Period Payment shall be identified on «Customer Name»'s books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of «Customer Name». Interim Period Payment funds shall not be pooled with other funds of «Customer Name» for short-term investment purposes until «Customer Name» has passed through such funds for its Residential Load as a credit or credits on its residential and small farm consumers' bills.

11. AUDIT RIGHTS

BPA retains the right to audit «Customer Name» at BPA's expense to determine whether the Interim Period Payment made to «Customer Name» under this Agreement were passed through to «Customer Name»'s eligible Residential Load.

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<#>Notwithstanding any of the foregoing provision of this Section 10, «Customer Name» shall have the right to not pass through any amount of any Interim Period Payment to its residential and small farm consumers' bills unless and until «Customer Name» has received from «Customer Name»'s State regulatory authority(s) assurances satisfactory to «Customer Name» regarding the ability of «Customer Name» to recover from its customers the amount of any «Customer Name» True-up Payment Amount (plus interest); *provided, that*, «Customer Name»'s right pursuant to this Section 10(d) may be waived by «Customer Name» through a written notice of such waiver to BPA.¶

BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load consistent with the provisions of this Agreement. BPA's right to conduct such audits of «Customer Name» with respect to a Contract Year shall expire 60 months after the end of each such Contract Year. As long as BPA has the right to audit «Customer Name» pursuant to this Agreement, «Customer Name» agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

12. DEEMER ACCOUNT BALANCE

As a result of entering into this Agreement, BPA does not waive its right, if any, to assert that a Deemer Account balance, if any, from Contract No. _____, the 1981-2001 Residential Purchase and Sale Agreement between BPA and «Customer Name» is required to be carried over to any subsequent agreement offered by BPA pursuant to Section 5(c) of the Northwest Power Act and «Customer Name» does not waive its right to contest any such carryover or to assert any defenses thereto.

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13. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

«Customer Name» will ensure that any entity that issues customer bills to «Customer Name»'s residential and small farm consumers shall provide written notice on such customer bills that a portion of their power and associated benefits is "Federal Columbia River Benefits supplied by BPA."

14. STANDARD PROVISIONS

(a) Amendments

Except as otherwise provided in Exhibit B, all amendments to this Agreement shall be set forth in a written instrument signed by authorized representatives of each Party.

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(b) Information Exchange and Confidentiality

The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, and scheduling and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA may use such information as necessary under this Agreement. BPA shall only disclose

information received under this provision to BPA employees who need the information for purposes of this Agreement.

(c) Entire Agreement and Order of Precedence

This Agreement, including all exhibits incorporated as part of this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement, it being understood that the 2000 Agreement, the 2001 Agreement and the Financial Settlement Agreement do not purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

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(d) No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(e) Waivers

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

(f) Uncontrollable Forces

Neither Party shall be in breach of their respective obligations under this Agreement to the extent the failure to fulfill any obligation is due to orders or injunctions issued by a court of competent jurisdiction ("Uncontrollable Force"). If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice; (2) attempt in good faith to stay, suspend or mitigate the effects of such Uncontrollable Force as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance.

15. EARLY TERMINATION

Notwithstanding any other provision of this agreement, in the event that BPA has not yet made the Interim Payment pursuant to this Agreement and BPA is enjoined or otherwise judicially precluded for any period of time from making either Standstill Payments pursuant to the Standstill and Interim Relief Payment Agreements or Interim Payments pursuant to the Residential Exchange Interim Relief and Standstill Agreements, then this Agreement shall be void *ab initio* and without any force and effect whatsoever.

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16. SIGNATURES

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Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for which he or she signs.

«FULL NAME OF UTILITY»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

Exhibit A
INTERIM PERIOD PAYMENT

Interim Period Payment Amount

The Interim Period Payment amount «Customer Name» shall receive under the terms of this Agreement is \$ _____.

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Exhibit B
RESIDENTIAL LOAD DEFINITION

1. «Customer Name»'s Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes «Customer Name»'s general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

- (a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by «Customer Name» under:
 - (b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the Utility under the Northwest Power Act, section 5(c).
2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

- 400 is equal to the horsepower limit defined in the Northwest Power Act,
- 0.746 is the factor for converting horsepower to kW,
- days in billing period is determined in accordance with prudent and normal utility business practices, and
- 24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the

farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of **[Date]**. Any new farms created after **[Date]**, must submit an application for exchange benefits to «Customer Name» which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
- ownership
- control
- operating practices
- distance between parcels

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.
6. The operator of a farm is required to certify to «Customer Name» all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide «Customer Name» and BPA all documentation requested to assist in the farm determination.

7. This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.