

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 110221

AN ORDINANCE relating to the City Light Department; authorizing the execution of a Metered Energy Efficiency Purchase Agreement with The Bullitt Foundation and the Cascadia Center for Sustainable Design and Construction for the purchase of energy from the Bullitt Center.

WHEREAS, the City Light Department ("City Light") acquires energy efficiency as its first priority energy resource and has been doing so since 1977; and

WHEREAS, City Light wishes to pursue innovative means of promoting energy efficiency, including efforts to pilot innovative strategies and programs; and

WHEREAS, The Bullitt Foundation has constructed an innovative building, the Bullitt Center, which was constructed and is operated as a Living Building Challenge project; and

WHEREAS, the Bullitt Center was developed and is operated to have extremely low net energy usage as an alternative to more typical conservation investments; and

WHEREAS, in addition to the energy efficiency investments made at the Bullitt Center, a 244.38 kW capacity solar generating system interconnected with Seattle's electric distribution system has been installed and at certain times of the year, it is anticipated that the solar system will generate energy that exceeds the Bullitt Center's energy consumption; and

WHEREAS, City Light and The Bullitt Foundation have agreed to an energy efficiency pilot program that is specific to the Bullitt Center's participation in Seattle's Living Building Challenge; and

WHEREAS, City Light, The Bullitt Foundation and Cascadia Center for Sustainable Design and Construction ("CCSDC") wish to enter into a Metered Energy Efficiency Purchase Agreement for a period of twenty (20) years, with the understanding that the first three years of the agreement will be on a pilot basis, and the expectation that the long term contract may need to be modified as a result of the information learned during the pilot period; and

WHEREAS, City Light's authority to enter into agreements to purchase power, including energy savings, is limited to a duration of two years but this agreement is for a 20-year period;  
NOW, THEREFORE,

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**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

1           Section 1. The General Manager and Chief Executive Officer of City Light, or his  
2           designee, is hereby authorized to execute for and on behalf of the City of Seattle a Metered  
3           Energy Efficiency Purchase Agreement with The Bullitt Foundation and CCSDC, attached  
4           hereto as Attachment 1.  
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6           Section 2. The General Manager and Chief Executive Officer of City Light, or his  
7           designee, is hereby further authorized to execute for and on behalf of the City of Seattle any  
8           additional agreements, including a metering and distributed generation purchase agreement and a  
9           metering service agreement, necessary and convenient for the implementation and management  
10          of the Metered Energy Efficiency Purchase Agreement.  
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12          Section 3. This ordinance shall take effect and be in force 30 days after its approval by  
13          the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
14          shall take effect as provided by Seattle Municipal Code Section 1.04.020.  
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1 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2014, and  
2 signed by me in open session in authentication of its passage this  
3 \_\_\_\_ day of \_\_\_\_\_, 2014.

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5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

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8 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

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11 Edward B. Murray, Mayor

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13 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

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15 \_\_\_\_\_  
16 Monica Martinez Simmons, City Clerk

17 (Seal)

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19 Attachment 1: Metered Energy Efficiency Purchase Agreement for the Metered Energy  
20 Efficiency Transaction Structure with The Bullitt Foundation and CCSDC .

**METERED ENERGY EFFICIENCY PURCHASE AGREEMENT**

**for the**

**Metered Energy Efficiency Transaction Structure**

**Between**

**THE CITY OF SEATTLE,**

**BY AND THROUGH ITS CITY LIGHT DEPARTMENT**

**And**

**THE BULLITT FOUNDATION (AS ENERGYTENANT™ AND SELLER)**

**And**

**CASCADIA CENTER for SUSTAINABLE DESIGN and CONSTRUCTION (AS  
BUILDING OWNER)**

## METERED ENERGY EFFICIENCY PURCHASE AGREEMENT

This Metered Energy Efficiency Purchase Agreement ("**Agreement**") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, ("**Effective Date**") by and between The Bullitt Foundation, a Washington nonprofit corporation acting as EnergyTenant and Seller ("**Bullitt**"), Cascadia Center for Sustainable Design and Construction a Washington for profit corporation as Building Owner, ("**CCSDC**"), and The City of Seattle, a Washington municipal corporation, by and through its City Light Department (hereinafter "**Seattle**").

Seattle, Bullitt and CCSDC are sometimes referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**."

### RECITALS

CCSDC, a wholly owned subsidiary of Bullitt, owns the Bullitt Center, a building located at 1501 East Madison Street, Seattle, WA 98122 ("**Bullitt Center**").

Bullitt has made and may continue to make substantial investments in deep energy efficiency in the Bullitt Center, which was constructed and is being operated under Seattle's Living Building ordinance. These investments and other investments made by Bullitt or other parties may make in the future are intended to cause the Bullitt Center to operate with a high degree of energy efficiency. In particular, the Bullitt Center is built and operated to exceed the energy performance of a building of a "**Standard Site**" (as defined below). If in fact it does so operate, the reduced energy consumption will allow Seattle to have more energy available to supply to others than it would if the Bullitt Center were a Standard Site.

The Parties have agreed to an energy efficiency pilot program that is specific to the Bullitt Center's participation in Seattle's Living Building ordinance (the "**Pilot Program**"). This Pilot Program, at the discretion of Seattle, may be made available to others who develop and operate a building that is intended, *inter alia*, to have extremely low energy usage as an alternative to more typical conservation investments.

Under this Pilot Program, the Parties will view the energy efficiency investments similarly to a traditional generation facility, contemplating the conserved energy as energy that is available for purchase by Seattle. Participation in this Pilot Program requires the building owner to specifically consent to pay for the **Standard Site Energy Consumption** (as defined below) charges that would be normally be associated with a **Standard Site**. Also necessary for the Pilot Program is a mechanism for the Parties to compare the actual Energy Consumption of the Bullitt Center to the consumption of a Standard Site. The development of a dynamic baseline (the amount of energy that would have been consumed in a Standard Site) and the measurement and comparison of the actual energy consumption of the Bullitt Center to that baseline will be accomplished with a dynamic baseline metering system, also known as the DeltaMeter® which will be installed and operated at the Bullitt Center.

Bullitt holds the right to sell the Metered Energy Efficiency from the Bullitt Center as energy generation "output" to Seattle, under the terms of separate agreements in place with CCSDC. CCSDC and Bullitt call that right an EnergyTenancy and with respect to the CCSDC, Bullitt is an EnergyTenant™. The EnergyTenancy right is of a duration sufficient to encompass the full term of this Agreement.

Bullitt's use of the Bullitt Center to generate Metered Energy Efficiency, as measured by the DeltaMeter, will be hereinafter referenced as the "**Energy Efficiency Facility**".

**EnergyRM**, an energy efficiency service provider, has developed the DeltaMeter, to serve the function of an unbiased, and transactionally accurate "output meter" to measure the amount of energy efficiency delivered relative to a Standard Site. Seattle is approving the use of the DeltaMeter on a pilot program basis and will contract with EnergyRM to conduct periodic measurement and verification of the DeltaMeter during both the pilot and contract periods.

In addition to the energy efficiency investments Bullitt has made at the Bullitt Center, Bullitt has installed 244.38 kW of solar generation facilities at the Bullitt Center (the "**Solar Generation Facility**"). The Solar Generation Facility has been interconnected with Seattle's electric distribution system and is subject to the terms of

Seattle's standard Interconnection Agreement entered into on August 14, 2014 by CCSDC.

At certain times of the year, it is anticipated that the Solar Generation Facility will generate energy that exceeds the Bullitt Center's energy consumption. CCSDC has agreed to sell and Seattle has agreed to purchase such excess solar generation pursuant to the terms and conditions set forth in a separate net metering and distributed generation agreement.

Seattle, CCSDC, and Bullitt wish to enter into a Metered Energy Efficiency Purchase Agreement with an Operating Period of twenty (20) years commencing on the **Term Commencement Date**, with the understanding that the first three years of the agreement will be on a pilot basis (the "**Pilot Phase**"). All Parties recognize that this Agreement may need to be modified after and as a result of the information learned during the Pilot Phase. Such agreement includes, and is specifically conditioned on the promise of CCSDC, and any successors to CCSDC, to pay for energy consumption at the Bullitt Center based on the energy consumption of a Standard Site. Specifically, CCSDC will pay for the actual energy consumed by the building, net of the solar production used by the Bullitt Center, plus the amount of energy efficiency delivered by the conservation features of which Bullitt has EnergyTenancy which are measured by the DeltaMeter. This billing arrangement operates as if the Bullitt Center was a Standard Site. Bullitt owns and maintains the energy efficiency benefits, which it is selling to Seattle. Seattle is purchasing these benefits from Bullitt, based on energy efficiency calculated by the DeltaMeter. The DeltaMeter will calculate the baseline energy use for a Standard Site and subtract both the actual electric consumption of the Bullitt Center and the solar generation used by the Bullitt Center. The result is the Metered Energy Efficiency.

Bullitt believes that this novel financial arrangement, whereby the utility's customer pays the utility for saved energy as though the energy efficiency measures were not implemented and the utility redirects those payments to an investor or implementer in the energy efficiency measures, holds significant promise for promoting

additional investment in energy efficiency, and wishes to demonstrate the operation of that arrangement through this pilot effort.

Seattle's agreement to enter into this energy efficiency purchase agreement is based on the premise that it will not cost the utility on a net basis any more per unit of savings than it would pay to acquire the same resources through existing conservation programs currently available to building owners. Bullitt believes that this principle will incent additional energy savings activities and better persistence of the efficiency generation.

The Parties acknowledge that the Metered Energy Efficiency Purchase Agreement here defined represents the same net value flow that the building would experience as savings and incentives under Seattle's standard conservation program offering, with the following caveats; first, the Metered Energy Efficiency Purchase Agreement carries true performance risk, as well as the prospect of performance upside, creating a useful incentive to ensure that the efficiency generation remains as robust as possible or is even improved; second, under this Metered Energy Efficiency Purchase Agreement, that same net value flow (modified by the performance variability just described), will result in a cash flow to Bullitt which Bullitt can put to use in whatever way it deems most appropriate, including to finance, maintain, incent and operate the enhancements; third, that the energy price paid under this Metered Energy Efficiency Purchase Agreement (the "**Metered Energy Efficiency Contract Rate**" as defined below) may not match the current retail price for energy delivered to the Bullitt Center; and fourth, that the Metered Energy Efficiency Contract Rate under this Metered Energy Efficiency Purchase Agreement has a known escalator, which is unrelated to any escalator in the retail price for energy delivered to the Bullitt Center.

Seattle and Bullitt have therefore determined that as of the "**Term Commencement Date**", which will occur upon completion of the Conditions Precedent (generally involving certain preliminary determinations and calibrations of the DeltaMeter for the Site, under the advisory supervision of the technical staff of the Northwest Energy Efficiency Alliance – "NEEA"), they will initiate the Pilot Phase and the operating term of this Agreement.

In consideration of the mutual promises set forth herein, and other valuable consideration, the parties agree as follows:

## ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below. Certain other capitalized terms are defined where they appear in this Agreement.

**"Additional Term"** has the meaning set forth in Section 2.01.3.

**"Affiliate"** means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**"Agreement"** has the meaning set forth in the Preamble.

**"Alternate Efficiency Agreement"** means any agreement that Seattle enters into whereby Seattle bills the customer at Seattle's standard tariff rates for estimated consumption without energy efficiency installations minus the actual site energy consumption measured in conventional ways.

**"Applicable Law"** means, with respect to any Party, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives, reliability standards and requirements of all regulatory and other authorities, whether governmental or otherwise, in each case applicable to or binding upon such Party and, in the case of Bullitt, the Energy Efficiency Facility.

**"Applicable Program"** means a domestic, international or foreign renewable portfolio standard including the Washington State renewable portfolio standard, renewable energy, emissions reduction or Product Reporting Rights program, scheme or organization, adopted by a governmental entity or otherwise mutually agreed upon, or

other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes. An Applicable Program includes any legislation or regulation concerned with renewable energy, oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (or the Kyoto Protocol thereof) or crediting "early action" with a view thereto, or laws or regulations involving or administered by a governmental administrator, or under any present or future domestic, international or foreign RECs, Environmental Attributes or emissions trading program. Applicable Programs do not include legislation providing for production tax credits or other direct third party subsidies for generation by a renewable energy source.

"**Bullitt**" has the meaning set forth in the Preamble.

"**CCSDC**" has the meaning set forth in the Preamble.

"**Claiming Party**" has the meaning set forth in Section 8.01.

"**Code**" means the Seattle Building Code of 2009, in effect as of July 11, 2011, the date construction permits were issued for the Bullitt Center.

"**Commercial Operation Date**" means the date, as memorialized in a written communication from Bullitt to Seattle, on which all portions of the Energy Efficiency Facility necessary to put the Energy Efficiency Facility into operation, are installed and capable of delivering Energy to the Delivery Point. Such date is expected and will be after the date of commercial operation of the Solar Generation Facility.

"**Defaulting Party**" has the meaning set forth in Section 6.01.

"**Delivery Point**" typically means the point of connection of the standard customer meter with Seattle. The delivery point for the Bullitt Center is defined as the customer side of the interconnection with Seattle after all metering.

"**DeltaMeter**" means the DeltaMeter baseline metering system as approved and monitored by the technical staff of the Northwest Energy Efficiency Alliance during the **Pilot Phase** and thereafter by Seattle through the Meter Services Agreement. The DeltaMeter baseline metering system calculates a baseline amount of energy consumption that is equivalent to the amount of energy that would have been consumed in a Standard Site, but without the significant energy efficiency investments. The DeltaMeter compares the actual energy consumption of the Bullitt Center to this baseline and reports the difference or "delta" as Metered Energy Efficiency.

**"Effective Date"** has the meaning set forth in the Preamble.

**"Energy Efficiency Facility"** has the meaning set forth in the Recitals.

**"Energy Tenant"** means Bullitt, the entity which holds the Energy Tenancy.

**"Energy Tenancy"** means the term based possession of the right to sell any or all of the capacity, energy, ancillary benefits, and associated environmental attributes of the electrical output of a facility (in the case of this contract Metered Energy Efficiency).

**"EnergyRM"** is an Oregon corporation, the developer and owner of the DeltaMeter, a party to a Meter Services Agreement with Seattle and to a Research and Development Agreement with NEEA (EnergyRM's EEMeter Study at the Bullitt Foundation in Seattle).

**"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Renewable Energy Facility, and its avoided emission of pollutants. Environmental Attributes include but are not limited to Renewable Energy Credits. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from a Renewable Energy Facility, (ii) production tax credits associated with the construction or operation of a Renewable Energy Facility and other financial incentives in the form of credits, reductions, or allowances associated with a Renewable Energy Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Bullitt to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by a Renewable Energy Facility for compliance with local, state, or federal operating and/or air quality permits. The term Environmental Attributes includes any other environmental credits or benefits recognized in the future and attributable to the energy generated by the Energy Efficiency Facility during the Term, unless otherwise excluded herein.

**"Event of Default"** has the meaning set forth in Section 6.01.

**"Facilities"** shall mean the Energy Efficiency Facility and the Solar Generation Facility together.

**"Force Majeure"** means an event or circumstance which prevents one Party from timely performing its obligations under this Agreement, which event or circumstance was

not anticipated as of the effective date of this Agreement, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Seattle's markets; (ii) Seattle's inability economically to use or resell the product(s) purchased hereunder; (iii) the loss or failure of Bullitt's or CCSDC's supply; or (iv) Bullitt's or CCSDC's ability to sell the product(s) at a price greater than the applicable Contract Rate. If the Claiming Party is Seattle, Force Majeure does not include any action taken by the City of Seattle in its governmental capacity.

**"Interconnection Agreement"** has the meaning set forth in the Recitals.

**"Interest Rate"** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**"Kilowatt-hour", "kWh" or "KWH"** means a unit of energy equal to one kilowatt-hour.

**"Megawatt-hour" or "MWh"** means a unit of energy equal to one thousand kilowatt-hours.

**"MEETS Renewable Energy Credits" or "MEETS RECs"** means tradable credits or certificates evidencing all Environmental Attributes associated with the Metered Energy Efficiency of the Energy Efficiency Facility (not including the Solar Generation Output of the Solar Generation Facility) to the extent such MEETS REC's exist or are available during the Term of this Agreement. One REC represents the Environmental Attributes associated with one (1) MWh of Energy.<sup>1</sup>

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<sup>1</sup> As of the date of this Agreement, RCW 19.285.030(17) reads:

"Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

As of the date of this Agreement, Washington law recognizes yield from efficiency as an eligible renewable, but only with respect to certain improvements in hydropower systems (utility owned or in irrigation systems), RCW 19.285.030(10.b). Customer premises efficiency isn't an eligible renewable resource under RCW 19.285, so the Generator isn't a Renewable Energy Facility.

**"Meter Services Agreement"** is an agreement between EnergyRM and Seattle that (1) requires EnergyRM to monitor, verify, maintain and calculate the energy efficiency savings at the Bullitt Center; (2) allows Seattle continuous access to the data, algorithms, historical baselines and calculations supporting the energy efficiency savings; (3) provides a mechanism for Parties to contest/audit meter results; and (4) provides alternate billing provisions if the meter systems at the Bullitt Center, including the DeltaMeter, are not functioning properly. Attached as Exhibit D is a summary term sheet for the proposed Meter Services Agreement. The term of the Meter Services Agreement shall coincide with this Agreement.

**"Metered Energy Efficiency"** means the adjusted baseline energy use of the Bullitt Center calculated by the DeltaMeter, less any Seattle Energy consumed by the Bullitt Center, and also less any energy or capacity contributed by the Solar Generating Facility to the Bullitt Center.

**"Metered Energy Efficiency Contract Rate"** means the rate, expressed in cents per kilowatt-hours, payable by Seattle to Bullitt for the purchase of Metered Energy Efficiency and Environmental Attributes generated by the Energy Efficiency Facility during the Term. The Metered Energy Efficiency Contract Rate for the Term is set forth in Section 5.01 hereto.

**"NEEA"** means the Northwest Energy Efficiency Alliance, currently under contract with Energy RM to provide research and development work on the DeltaMeter and its operation during the Pilot Phase.

**"Non-Defaulting Party"** has the meaning set forth in Section 6:01.

**"Notice"** has the meaning set forth in Article 7.

**"Operating Year"** The first Operating Year will begin on the Effective Date. Successive Operating Years will commence on each anniversary of the Operating Date.

**"Party"** and **"Parties"** has the meaning set forth in the Preamble.

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Consequently, there are no MEET RECS available as of the effective date. However, if Washington law changes to recognize customer premises efficiency yield as an "eligible renewable resource", and the DeltaMeter qualifies as a tracking system "selected by the department [of Commerce]," such change will be effective to assign any resulting MEET RECS created by the Energy Efficiency Facility under the terms of this Agreement, effective from the later of the date the definition becomes applicable and the date the tracking system approval is received.

**"Pilot Phase"** means the first three years after the Term Commencement Date, as set forth in Section 2.01.2.

**"Product Reporting Rights"** has the meaning set forth in the definition for Environmental Attributes in Article 3.

**"Prudent Electrical Practice"** means any of the practices, methods and acts which (a) when engaged in, have previously been engaged in or approved by a significant portion of the electric utility industry, or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to accomplish the desired result at a reasonable cost consistent with Applicable Law, reliability, safety, efficiency and expedition. Prudent Electrical Practice is not limited to the optimum practice, method or act, but rather is a spectrum of possible practices, methods or acts. With respect to this Agreement, Prudent Electrical Practice also means maintenance of the Facilities' systems and operations consistent with performance at or above design operating efficiency, recognizing that a building systems' efficiency is related to occupant need (comfort, reliability, safety, productivity) rather than to absolute energy consumption.

**"Qualified Reporting Entity"** or **"QRE"** means an organization providing renewable output on a unit-specific basis for the purpose of creating WREGIS Certificates that has met the QRE guidelines established in the WREGIS operating rules.

**"Remaining Incentive Payment"** shall have the meaning set forth in Section 2.06.

**"Renewable Energy Facility"** means an electric generation unit or other facility or installation that produces electric energy using an eligible renewable resource as defined by the Washington Energy Independence Act and includes a renewable energy source recognized under an Applicable Program as specified by the Parties.

**"Representative"** has the meaning set forth in Section 7.01.

**"Resource Adequacy Benefits"** means the rights and privileges associated with the Energy Efficiency Facility that satisfy any part of Seattle's resource adequacy requirements, as established by the WECC or other applicable regulator of electric reliability.

**"Seattle"** has the meaning set forth in the Preamble.

**"Solar Generation Facility"** has the meaning set forth in the Recitals.

**"Standard Site"** means a building of like size, usage and attributes as the Bullitt Center, built to minimally comply with the Code, without energy conservation features beyond those required by the Code.

**"Standard Site Energy Consumption"** has the meaning set out in Section 3.02.1

**"Technical Requirements"** means those codes, standards, and specifications for the Meters mutually agreed upon by the Parties in writing.

**"Term"** has the meaning set forth in Section 2.01.

**"Term Commencement Date"** means the date on which all of the conditions precedent listed in Section 2.02 have been completed to the Parties' satisfaction.

**"WECC"** means the Western Electricity Coordinating Council or its successor organization.

**"Western Renewable Energy Generation Information System" or "WREGIS"** means the independent, renewable energy tracking system for the WECC region that tracks renewable energy generation from units that register in the system using verifiable data and creates renewable energy certificates that can be used to verify compliance with state regulatory requirements and in voluntary market programs.

**"WREGIS Certificate"** means all renewable and Environmental Attributes from one Megawatt-hour of electricity generation from a renewable generating unit registered with WREGIS. The WREGIS system will create exactly one WREGIS Certificate per Megawatt-hour of generation that occurs from a registered renewable generating unit.

## ARTICLE 2. TERM AND TERMINATION

### 2.01 Term

**2.01.1 Operating Period.** The operating period of this Agreement shall include the three (3) year Pilot Phase, and unless earlier terminated pursuant to this Agreement, the seventeen (17) year Additional Term, for a total of 20 years from the Term Commencement Date.

**2.01.2 Pilot Phase.** The Pilot Phase shall commence effective at 2400 hours on the Term Commencement Date, which shall establish the commencement of

Seattle's Pilot Program on metered energy efficiency. The Pilot Phase shall remain in effect for a period of three years unless earlier terminated pursuant to this Agreement.

**2.01.3 Additional Term.** At the conclusion of the Pilot Phase, unless previously terminated pursuant to the provisions of this Article 2, this Agreement will extend for another 17 years ("**Additional Term**") for a full operating Term of 20 years. Any party may by Notice delivered before the end of the Pilot Phase, terminate this Agreement.

**2.02 Conditions Precedent.** This Agreement is conditional upon and shall not take effect or be enforceable against either Party until all of the following have occurred:

2.02.1 Bullitt and Seattle are in receipt of and are satisfied with NEEA's written confirmation that it has received and verified the accuracy of EnergyRM's construction of: the historical baseline required for operation of the DeltaMeter; and the resulting anticipated annual load curve at monthly interval resolution under typical meteorological year conditions and anticipated use conditions.

2.02.2 EnergyRM has delivered to each party its Notice of Readiness to Commence Operations under the terms of the Metered Service Agreement;

2.02.3 EnergyRM and Bullitt have demonstrated the ability to deliver billable data measured to the NEEA-approved baseline within reporting structures meeting Seattle billing system requirements;

2.02.4 Seattle has reviewed the NEEA information and accepted the DeltaMeter for use under this Agreement; and

2.02.5 This Agreement has been approved for execution by a lawfully enacted ordinance of The City of Seattle; and

2.02.6 A Metered Services Agreement has been agreed upon and executed by Seattle and EnergyRM; and

2.02.7 Seattle has issued a confirmation letter to all Parties stating that all conditions have been met and specifying a Term Commencement Date for the Agreement.

**2.03 Amendment Prior to the Start of Pilot Phase.** If, before all the conditions precedent are satisfied, the Seattle City Council or authorized representative of Bullitt or CCSDC proposes modification of this Agreement, the Parties shall exercise commercially reasonable efforts to either (i) amend this Agreement to comply with the changes; (ii) negotiate a replacement agreement, that in either case provides benefits similar to those provided under this Agreement to both Parties and that is expected to be acceptable to the Seattle City Council, CCSDC and Bullitt; or (iii) terminate this Agreement and discussions.

#### **2.04 Suspension and Termination Rights.**

##### **2.04.1 Seattle's Rights to Suspend or Terminate.**

**2.04.1.1 Suspension for Failure to Comply with Laws.** Seattle may suspend its purchases of Metered Energy Efficiency and associated Environmental Attributes, under this Agreement if and to the extent at any time after the Term Commencement Date, the Energy Efficiency Facility fails to comply in any material respect with any federal, state or local law, regulation or ordinance applicable to such facility in ways material to the delivery of Metered Energy Efficiency, and Bullitt or CCSDC, whichever the case may be, does not cure such failure within forty (40) Days after Bullitt or CCSDC receives Notice from Seattle, or otherwise, describing the failure in reasonable detail; provided, however, that if the failure to comply is not reasonably capable of being cured within such forty-day cure period, Bullitt or CCSDC, whichever the case may be, will have additional time to cure the event of non-compliance if Bullitt or CCSDC commences to cure the failure within the 40-day cure period, diligently pursues the cure, and the failure is capable of being cured and is in fact cured within no more than one-hundred ninety (190) Days after Bullitt or CCSDC receives Notice of the failure from Seattle or otherwise. The suspension would commence at the end of the 40-day cure period, unless the cure period is extended as contemplated by the proviso set forth in the preceding sentence (in which case the suspension would commence at

the end of such extended cure period). Bullitt or CCSDC, whichever the case may be, shall provide Seattle with reasonably detailed information concerning the commencement of the cure and anticipated diligent pursuit of the cure on or before the 41st Day following Notice. Bullitt or CCSDC, whichever the case may be, shall provide updates of such information as reasonably requested by Seattle. Any such suspension of Seattle's purchases of Metered Energy Efficiency and associated Environmental Attributes under this Agreement shall end two (2) Business Days after Bullitt or CCSDC corrects to Seattle's reasonable satisfaction the non-compliance described in Seattle's Notice, and Bullitt or CCSDC gives Seattle Notice that the non-compliance has been corrected. A suspension shall not extend the Term, and neither Party shall be required to make up the deliveries of or payments for Metered Energy Efficiency and Environmental Attributes that would have otherwise been made during the suspension period.

**2.04.1.2 Suspension or Termination by Bullitt for an event of Default by Seattle shall be pursuant to Article 6.**

**2.05 Suspension or Termination.** During its Term, this Agreement may be suspended or terminated by any of the applicable provisions set forth in Article 2.

**2.05.1.1 Effect of Suspension.** Notwithstanding any provision of this Agreement to the contrary, if Seattle suspends this Agreement under Section 2.05, Seattle shall be released and discharged from any obligations to take and pay for Metered Energy Efficiency and Environmental Attributes under this Agreement from and during the period of such suspension, but only to the extent of such suspension, and Bullitt shall be released and discharged from any obligations to sell and deliver Metered Energy Efficiency and Environmental Attributes under this Agreement from and during the period of such suspension, but only to the extent of such suspension. In such event, Bullitt may sell the Energy Efficiency Facility's Metered Energy Efficiency and Environmental Attributes to a third party, but if Bullitt sells such Metered Energy Efficiency and Environmental Attributes at a combined price greater than the Contract Rate, Seattle shall be entitled to receive ninety percent (90%) of the amount paid for such Metered Energy Efficiency and Environmental Attributes in excess of the Contract

Rate. This amount shall be due and payable to Seattle on the 20<sup>th</sup> Day of the month following the month in which the Bullitt receives payment for such Metered Energy Efficiency and Environmental Attributes.

**2.05.1.2 Seattle's Right to Terminate.** If any suspension under Section 2.04.1.1 continues for a period of more than one hundred ninety (190) Days, Seattle shall have the right to terminate this Agreement in its sole discretion.

**2.06 Pilot Phase Provisions.** Seattle, CCSDC and Bullitt recognize the first-of-its-kind nature of this Agreement for the Pilot Program. Consequently, additional protections have been agreed to by the Parties.

**2.06.1 Termination for Convenience.** Any Party shall have the right to terminate this Agreement at any time during the Pilot Phase, regardless of whether an Event of Default by any other Party has occurred. Provided that, termination, by any Party other than for an Event of Default by Bullitt, will be coupled with the payment described in paragraph 2.07 below. The parties recognize that Seattle may wish to enter into another Pilot Program energy efficiency purchase agreement with a third party, to experiment further, and agree that Seattle shall have the ability to do so expressly as one or more additional pilot or trial agreements, *provided* that if, during the Pilot Phase, Seattle enters another Alternate Efficiency Agreement that cannot be terminated at will, Bullitt will be entitled to either its full, negotiated twenty year term, or the same minimum term as the longest other such pilot, whichever is shorter at the time the other agreement is entered into.

**2.06.2 Expiration of Seattle's Right to Terminate for Convenience.** Seattle's right to terminate this Agreement for convenience pursuant to Section 2.06.1 will expire completely as of the date Seattle enters into an Alternate Efficiency Agreement, or similar agreement, with another party that is not intended to be a second pilot agreement, or the expiration of the Pilot Phase, whichever is sooner. An agreement will be regarded as an Alternate Efficiency Agreement if it includes a system whereby Seattle bills the customer at Seattle's standard tariff rates for energy efficiency yield (or estimated consumption without energy efficiency installations) minus the actual site energy consumption measured in conventional ways. Seattle will disclose its entry into

such agreement to Bullitt. Upon request by Bullitt, Seattle shall provide Bullitt with a copy of such agreement, provided such disclosure and provision requirement will cease upon the ending of the Pilot Phase.

**2.07 Payment of Remaining Incentive in the event of Termination for Convenience During the Pilot Phase.** If any Party terminates this Agreement during the Pilot Phase other than for an Event of Default by Bullitt, Bullitt shall be entitled to recovery of the conservation incentive payment that it would have been entitled to under more conventional conservation agreements in effect as of the Effective Date. Seattle has determined that the original incentive payment for the conservation investments made by Bullitt would have been \$83,400 (the "**Original Incentive**") The "**Remaining Incentive Payment**" shall be calculated as follows:

The Original Incentive;

*minus* all amounts paid under this Agreement for Metered Energy Efficiency up to and including the date of termination;

*plus* all amounts Seattle has invoiced CCSDC for Metered Energy Efficiency.

Example 1:

If the original incentive from Seattle to Bullitt upon commissioning would have been: \$83,400.

The contract is terminated after:

- Seattle has paid \$52,000 in payments to Bullitt.
- Seattle has invoiced \$40,000 for Metered Energy Efficiency to CCSDC (resulting in \$12,000 in net cost to Seattle)
- As the payments are on confirmed delivery, we assume they are paid at the end of a month

The Remaining Incentive Payment would be: \$71,400 (\$83,400-12,000).

Example 2:

If the original incentive from Seattle to Bullitt upon commissioning would have been: \$83,400

- Seattle has paid \$200,000 in payments to Bullitt

- Seattle has invoiced \$105,000 for Metered Energy Efficiency to CCSDC (resulting in \$95,000 in net cost to Seattle)
- The termination date is January 1, 2021 and the January payment (for December delivery) is made (eight years of pilot payments)  
Then the payment would be: \$0.00

The Remaining Incentive Payment will never be less than zero.

**2.07.1.1 Notices of Suspension or Termination.** Notwithstanding the provisions of Section 7.02, each Party shall give the other Parties as much advance oral or written notice as possible of issues or concerns that may give rise to any decision to suspend or terminate this Agreement. Any suspension or termination under this Agreement requires delivery of a written Notice pursuant to Article 7 not less than fifteen Days prior to the proposed termination or suspension, specifying the basis for the suspension or termination and the date upon which the suspension or termination shall become effective.

**2.08 Effect of Termination.** Except as otherwise provided herein, upon the termination of this Agreement no Party shall have any further liability to the other under the Agreement, except that any liabilities incurred or accrued prior to termination shall continue until paid. Following termination, each Party shall as applicable, render to the other Parties a final invoice for the payment obligations of such Party, if any, incurred up to the termination date and/or make full payment of all amounts shown on outstanding invoices, including without limitation the foregoing final invoice; and in good faith and to the best of its ability, do all things necessary and proper to ensure the efficient, proper close-out of this Agreement.

### **ARTICLE 3.**

#### **ENERGY EFFICIENCY POWER PURCHASE AND SALE**

**3.01 Purchase and Sale of Metered Energy Efficiency and Environmental Attributes.** In accordance with and subject to the provisions hereof, commencing on the first Day of the Pilot Phase and continuing throughout the Term, Bullitt shall sell and deliver to Seattle at the Delivery Point, and Seattle shall purchase and receive

from Bullitt at the Delivery Point, the Metered Energy Efficiency and all title and interest in and to the Metered Energy Efficiency and Environmental Attributes of the Energy Efficiency Facility, as measured in MWh at the DeltaMeter. Bullitt shall provide Seattle at least thirty (30) days written Notice of any sale, pledge, assignment, transfer, conveyance, or any other change in ownership of the Energy Tenancy in the Bullitt Center.

**3.02 Building Owner Agreement CCSDC to Be Billed for DeltaMeter Calculated Consumption at Seattle Service Rates For Similarly Situated Standard Site Customers.**

3.02.1 CCSDC acknowledges and agrees, as the building owner and customer of Seattle, that it will be billed as if the Bullitt Center had the energy consumption of a Standard Site. Energy consumption of a Standard Site is the value calculated by the DeltaMeter as the *sum of*: 1) actual energy consumed at the Bullitt Center; *minus* 2) solar energy produced at the Bullitt Center; *plus* 3) Metered Energy Efficiency at the Bullitt Center (the "**Standard Site Energy Consumption**"). Seattle customer charges will be billed at the then applicable Seattle service rates, including all components of the customary charges and service rates paid by other similarly situated customers of Seattle. An illustrative example of how the DeltaMeter billing for energy consumption operates is provided in Exhibit A.

3.02.2 CCSDC waives any and all claims against Seattle arising out of Seattle's charging and collecting monies associated with the DeltaMeter calculated Standard Site Energy Consumption rate.

3.02.3 CCSDC waives any and all rights or access to any future conservation programs offered by Seattle for the Bullitt Center and agrees that it will not apply or submit any requests for other conservation programs offered by Seattle, during the time that this Agreement is in effect.

3.02.4 CCSDC shall provide at least thirty (30) days written Notice prior to any sale, pledge, assignment, transfer, conveyance, or any other change in ownership of the Bullitt Center.

3.02.5 CCSDC will disclose the provisions of this Agreement to any future owner in a transfer or sale of the Bullitt Center and to make commercially reasonable efforts to require any subsequent owner or transferee of such rights to consent to be bound by this Agreement in writing for the remainder of any Term under this Agreement. Notwithstanding anything in this Agreement to the contrary, any failure of a subsequent owner to provide consent in writing to all the terms and conditions of this Agreement without change shall be considered an Event of Default under which Seattle may terminate this Agreement without any penalty.

3.02.6 CCSDC will disclose to all current and future tenants of the Bullitt Center that the electric energy billing will be based on a Standard Site Energy Consumption and not the actual energy consumption of the Bullitt Center. CCSDC will contractually require any future owner, successor or assign to continue to notify future tenants that the energy consumption bill for the Bullitt Center and its tenants will be based on a Standard Site Energy Consumption.

3.02.7 CCSDC agrees to grant Seattle or its designated representative access to all input data used in the calculation of the monthly Adjusted Baseline Energy Use. Access shall entail either periodic transmittals of monthly input data or remote access to web-based copies of the same. All inputs, assumptions, and/or calculations used to execute non-routine adjustments to the baseline must be documented and available to Seattle and/or its representatives.

**3.03 Title and Risk of Loss.** Title to, liability for, and risk of loss associated with the Metered Energy Efficiency sold to Seattle under this Agreement shall transfer from Bullitt to Seattle upon delivery of Metered Energy Efficiency at the Delivery Point. Title to, liability for, and risk of loss associated with the Environmental Attributes sold to Seattle under this Agreement shall transfer from Bullitt to Seattle at the Delivery Point. Bullitt warrants that it will deliver to Seattle Metered Energy Efficiency and

Environmental Attributes free and clear of all liens, security interests, claims and encumbrances of any interest therein or thereto by any person arising prior to the Delivery Point.

**3.04 Resource Adequacy.** Bullitt hereby grants, pledges, assigns and otherwise commits to Seattle the full Metered Energy Efficiency of the Facility during the Term for all purposes, including among other things satisfying any Resource Adequacy Benefit that may be applicable to Seattle; provided, however, Bullitt shall not be required to provide Seattle with any ancillary services that may be associated with the sale of capacity, including but not limited to black start capability, reactive power, spinning reserves or regulation. Bullitt represents, warrants and covenants to Seattle that Bullitt will not, during the Term, use, grant, pledge assign or otherwise commit any portion of the Metered Energy Efficiency and the associated Environmental Attributes to any entity other than Seattle. The Parties shall take all actions (including, without limitation, amending this Agreement) and execute all documents or instruments as may be reasonably necessary or advisable to effectuate the use of the Resource Adequacy Benefits of the Facility for Seattle's sole benefit throughout the Term

**3.05 MEETS Renewable Energy Credits.** Bullitt shall, to the fullest extent permitted by Applicable Law, make the Environmental Attributes from the Energy Efficiency Facility available to Seattle immediately upon Bullitt's obtaining the Environmental Attributes associated with such Metered Energy Efficiency. The parties acknowledge, however, that as of the date of this Agreement, the Metered Energy Efficiency does not qualify for MEETS RECS under applicable Washington State law, and that there are no WREGIS standard reporting rules regarding MEETS RECS or Environmental Attributes associated with energy efficiency as renewable energy. The parties agree that if (a) the Energy Efficiency Facility becomes an Eligible Renewable Resource under Washington law, and (b) the DeltaMeter qualifies as the basis for measurement for a "renewable energy credit tracking system selected by the department" under applicable law and under WREGIS, then the provisions in Section 3.06 will apply subject to the proviso that the total cost of doing so does not exceed \$1,500.00 annually. If the cost exceeds that limit, then Seattle will either pick up the

costs beyond that limit for REC reporting, tracking, and verification, or waive delivery of the MEETS RECS, at its discretion. Bullitt agrees to make good faith and reasonable efforts to assist Seattle in any effort Seattle takes to secure eligibility for the Energy Efficiency Facility.

**3.06 Delivery of Renewable Energy Credits.** The type and amount of any Environmental Attribute transferred and delivered to Seattle by Bullitt will be measured, calculated, verified and certified as required by the Applicable Program or as otherwise agreed by the Parties. By transferring MEETS RECS from the Energy Efficiency Facility to Seattle, Bullitt transfers any and all, and the exclusive right to use those MEETS RECS. Transfer of an Environmental Attribute does not transfer eligibility for production tax credits or other direct third-party subsidies for generation of electricity by any specified renewable energy facility. Delivery of a REC grants Seattle the right, exclusive to the full extent applicable, to verify, certify, and otherwise take advantage of the rights, claims and ownership in the REC. All MEETS RECS or Environmental Attributes delivered to Seattle, including any and all CO2 benefits, emissions offsets, reductions or claims, shall be delivered to Seattle within the WREGIS tracking system. Bullitt shall deliver WREGIS Certificates by initiating transfer to the WREGIS account of Seattle in accordance with the terms and conditions of the WREGIS on a schedule that accommodates WREGIS reporting. Bullitt shall, at its sole cost and expense, take all commercially reasonable actions and execute all commercially reasonable documents or instruments necessary to ensure that the MEETS RECS sold hereunder can be transferred to Seattle utilizing WREGIS and that the transfer of WREGIS Certificates shall represent the MEETS RECS attributable to or associated with such Environmental Attributes from the Facility. Bullitt shall comply with all laws applicable to it, including, without limitation, the WREGIS operating rules, regarding the certification and transfer of such WREGIS Certificates to Seattle and Seattle shall be given sole title to all such WREGIS Certificates. Bullitt shall make such filings and take such other actions as Seattle may from time to time reasonably request in order to preserve and maintain Seattle's title to the Environmental Attributes and to enable Seattle to use, sell and transfer such Environmental Attributes. Bullitt agrees to provide, at the time of the monthly invoice rendered pursuant to Article 5, to Seattle or an entity designated by

Seattle, documentation of Bullitt's sale to Seattle of the Environmental Attributes in an amount equal to the Metered Energy Efficiency as measured by the DeltaMeter. Bullitt shall provide a written attestation to document the source, quality and quantity of Environmental Attributes delivered to Seattle. Seattle and Bullitt may modify the form of such attestation to the extent necessary to conform to the reporting requirements adopted by any entity that verifies Seattle's renewable energy purchases.

**3.07 Renewable Energy Credits Accounting.** Bullitt agrees that it (or its designee) will, at its own expense (subject to the proviso in section 3.05 regarding costs), be the reporting entity (QRE in the case of WREGIS) for the purpose of providing renewable output (reportable renewable generation data) to WREGIS, its successor organization or another entity, if any, that Seattle uses to verify its renewable energy purchases and that requires registration, inspections, certification or other evidence of the quality and/or quantity of MEETS RECS. From this renewable generation data WREGIS will create WREGIS Certificates that Bullitt will transfer to Seattle monthly. Seattle will reimburse Bullitt for any charges incurred by Bullitt from WREGIS for transferring the WREGIS Certificates to Seattle. Further, at Seattle's request and expense, the Parties shall execute any such additional documents and instruments necessary or desirable to evidence the Environmental Attributes or to effect or evidence transfer of the Environmental Attributes to Seattle or its designees.

#### **ARTICLE 4.**

#### **DELTAMETER TESTING AND CALIBRATION**

**4.01 NEEA Analysis.** Prior to the Effective Date, NEEA shall undertake a review of the methodology used to calibrate the DeltaMeter for the Energy Efficiency Facility. NEEA shall also articulate its conclusions and may make recommendations for the ongoing use of the DeltaMeter. The Parties shall cooperate and work in good faith to obtain an annual analysis and validation of the DeltaMeter by NEEA or an equivalent consulting agency for each year of the Pilot Phase.

**4.02 Annual Testing.** The Parties agree that annual testing, calibrations and assessments may be done on the DeltaMeter by Seattle. Seattle agrees to consider

utilizing NEEA as the third-party reviewer and tester, but retains the right to perform the annual testing, calibrations and assessments itself, or to select an alternative third-party reviewer and tester in the future. Costs associated with annual testing by third-parties paid by Seattle shall be deducted from the amounts Seattle pays to Bullitt for Metered Energy Efficiency.

**4.03 Seattle Analysis and Input.** Bullitt and CCSDC expressly consent to Seattle's access to NEEA, or any successor to NEEA, and such entities' materials related to the DeltaMeter. Seattle may request that NEEA, or its successor, provide copies of any such materials directly to Seattle. Seattle may provide input and analysis to NEEA, or any successor, and to the extent NEEA, or any successor, approves any changes to the DeltaMeter, or the DeltaMeter readings, such changes should be introduced and altered accordingly.

**4.04** At any point during the Pilot Phase or the Additional Term, any Party may contest the findings and readings of the DeltaMeter by submitting written Notice to the other Parties. In the event that Seattle believes there is any inaccuracy in the findings and readings of the DeltaMeter, Seattle may withhold any contested amounts due, but shall pay any undisputed amounts. Upon such Notice by Seattle to Bullitt and CCSDC of the alleged misperformance of the DeltaMeter, Seattle can institute its own manual or third-party testing of the DeltaMeter readings and information. To the extent any performance issues are found, the Parties shall work cooperatively to recalculate any prior billings that may have been affected. If no discrepancy is found, the testing of the DeltaMeter readings and information shall be considered Seattle's annual opportunity to test, and no additional test may be performed within a calendar year.

## ARTICLE 5.

### RATES, BILLING AND PAYMENT

**5.01 Metered Energy Efficiency Contract Rate.** Seattle shall pay Bullitt for all Metered Energy Efficiency and Environmental Attributes delivered to Seattle hereunder at the Contract Rates set forth below.

5.01.1 Bullitt shall invoice Seattle for each kilowatt-hour of Metered Energy Efficiency reported by the DeltaMeter. An illustrative chart showing how the Bullitt Center's Energy Consumption will work in conjunction with the DeltaMeter, the Solar Generation, and any necessary Seattle energy provided to the Bullitt Center is attached as Exhibit B. For each billable kilowatt-hour of Metered Energy Efficiency measured at the DeltaMeter, including the Environmental Attributes of that Metered Energy Efficiency, Seattle shall pay Bullitt an amount equal to: (i) the negotiated purchased power energy rate of \$0.0591 per kilowatt-hour, escalated at 2% annually (escalation commencing January 1, 2016); plus (ii) two and one half cents (\$0.025) per kilowatt-hour of Metered Energy Efficiency as a "pay for performance" incentive, not escalated (in lieu of an upfront incentive payment); minus (iii) fees paid by Seattle to EnergyRM pursuant to the Meter Services Agreement. In the event that Seattle's credit for fees paid under subsection (iii) above exceeds the amounts Seattle must pay to Bullitt for subsections (i) and (ii) above on any given invoice, Seattle shall set over any excess remaining credit for fees owed by Bullitt to the next invoice period.

**5.02 Taxes.** Bullitt and CCSDC shall be responsible for paying all existing and any new taxes imposed by any federal, state or local governmental agency on the Facilities and on or with respect to the delivery and sale of any Metered Energy Efficiency and Environmental Attributes delivered to Seattle that are imposed hereunder before delivery to the Delivery Point. Seattle shall be responsible for paying all existing and any new taxes imposed by any federal, state or local government agency on the Metered Energy Efficiency and Environmental Attributes purchased and received hereunder after the Delivery Point. If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, such responsible Party shall reimburse the other for such taxes upon request. If Seattle is exempt from payment of taxes that Bullitt or CCSDC otherwise would be required to collect in connection with the sale of Metered Energy Efficiency and Environmental Attributes, then Seattle shall provide Bullitt with all necessary documentation to evidence such exemption.

**5.03 Bi-Monthly Payments for Metered Energy Efficiency.**

**5.03.1 For Metered Energy Efficiency.** On a bi-monthly schedule, no later than the tenth (10<sup>th</sup>) Day of each calendar month during the Term, Bullitt shall deliver to Seattle an invoice setting forth the total amount due to Bullitt for the purchase by Seattle of Metered Energy Efficiency and Environmental Attributes for the immediately preceding billing period, calculated as follows: the quantity of Metered Energy Efficiency as determined by the DeltaMeter, multiplied by the applicable Contract Rate set forth in section 5.01.1 less the fees paid by Seattle to EnergyRM pursuant to a Meter Services Agreement separately executed by EnergyRM and Seattle. Bullitt may also invoice Seattle for any other amounts due to Bullitt allowed in this contract.

**5.04 Payments by Seattle.** Seattle shall pay to Bullitt the amount specified in the applicable bill per Section 5.03. Seattle shall pay such amount by electronic wire transfer of immediately available funds by the later of ten (10) Days after Seattle's submission to Bullitt of the invoice, or the twentieth (20<sup>th</sup>) Day of the month, whichever is later. If the due date is not a Business Day, Seattle shall pay the monthly bill on the Business Day following such due date. In the event of a dispute, all undisputed amounts shall be paid when due, but such payment shall not waive either Party's right to dispute the bill under Section 5.06.

**5.05 Interest on Unpaid Amounts.** Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

**5.06 Billing Disputes.** If Seattle believes that there is an error in any invoice, then Seattle shall so notify Bullitt of the alleged error (including a reasonably detailed description of the nature and effect of the error), within ninety (90) Days after receipt of any invoice. If Bullitt disagrees with Seattle as to the allegation of error, then Bullitt shall so notify Seattle within thirty (30) Days after receipt of Seattle's Notice. The designated invoices and payments contacts of the Parties as listed in **Exhibit C** (Contact Information) shall meet, by telephone conference call or otherwise, for the purpose of attempting to resolve the dispute, within five (5) Business Days after

Bullitt's response. If the Parties are unable to resolve the dispute within sixty (60) Days after their initial meeting, either applicable Party may proceed to seek any remedy that may be available to that Party at law or in equity (provided that any such remedies shall be limited as provided in this Agreement). If the billing dispute is resolved in favor of Bullitt, Seattle shall promptly pay any unpaid amount owed, plus interest on such unpaid amount at the rate specified in Section 5.05. Such interest will accrue from the date on which absent dispute Seattle would have paid the disputed amount to Bullitt until the date on which Seattle makes payment in full of the amount owed.

**Corrected Invoices.** If Bullitt identifies an error in an invoice, it shall promptly give Seattle a reasonably detailed Notice describing the nature and effect of the error within thirty (30) Days after delivery of the invoice. If Seattle notifies Bullitt in writing within thirty (30) Days of receipt of such Notice that Seattle disagrees with the allegation of an error, the Parties' invoices and payments contacts (listed in Exhibit C) shall meet, by telephone conference call or otherwise, within five (5) Business Days after Seattle's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within sixty (60) Days after their initial meeting, either Party may proceed to seek whatever remedy may be available to that Party at law or in equity (provided that any such remedies shall be limited as provided in this Agreement). If the error requires the Bullitt to reimburse Seattle for amounts previously paid by Seattle, Bullitt shall promptly reimburse Seattle for such amounts or credit Seattle for such amounts on the next invoice to Seattle plus interest on such amount at the rate specified in Section 5.05. Such interest will accrue from the date on which Seattle paid the disputed amount to Bullitt. If the error requires Seattle to pay Bullitt additional amounts, the applicable Party shall add the amount owed to a subsequent invoice plus interest on such amount at the rate specified in Section 5.05. Such interest will accrue from the later of the date on which Seattle payment was due or the date on which the applicable Party gives Seattle Notice of the dispute.

## **ARTICLE 6. DEFAULTS AND REMEDIES**

**6.01 Events of Default.** An "Event of Default" shall mean with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

6.01.1 The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice of such failure is given to the Defaulting Party by the other Party (the "**Non-Defaulting Party**"). The Non-Defaulting Party shall provide immediate written Notice sent to the Representative of the Defaulting Party and the Representative of the other remaining Party, both as identified in Exhibit C and also shall send the Notice by overnight delivery to such contact persons;

6.01.2 The failure by the Defaulting Party to provide clear and good title as required by Article 3, or to have made accurate representations and warranties as required by Article 10 and such failure is not cured within five (5) Business Days after written Notice thereof to the Defaulting Party;

6.01.3 Subject to the remedy periods provided under Section 2.04.1.1, the failure by the Defaulting Party to comply with a material term or condition of this Agreement if such failure is not remedied within fifteen (15) Business Days after written Notice of such failure is given to the Defaulting Party by the Non-Defaulting Party, provided however, that the Defaulting Party may request up to an additional 150 days from the Non-Defaulting Party to cure the failure by providing a detailed plan outlining the need for the additional time, together with reasonable milestones to ensure diligent effort on the part of the Defaulting Party during any extended cure period granted by the Non-Defaulting Parties;

6.01.4 The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation;

6.01.5 With respect to the Defaulting Party's Guarantor, if any:

6.01.5.1 A material representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

6.01.5.2 The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement, and such failure shall not be remedied within three (3) Business Days after written Notice;

6.01.5.3 The institution, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation;

6.01.5.4 The failure, without written consent of the other Parties, of a Guarantor's guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each transaction to which such guarantee shall relate; or

6.01.5.5 A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any guarantee.

## **6.02 Remedies Upon Default.**

6.02.1 **Suspension.** If an Event of Default other than as specified in Section 2.05.1.1 shall have occurred and be continuing, any Non-Defaulting Party, upon written Notice to the Defaulting Party and the other remaining Party, shall have the right to suspend performance of its obligations under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days and such suspension is available only once for each default. This 10-Business Day suspension period shall not affect in any way the 30-day period for exercising a right of termination under Section 6.02.2. The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the

suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of, or waiver by the Non-Defaulting Party of, the applicable Event of Default. If the Non-Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the 10-Business Day period specified above, it may do so only by providing at least twenty-four (24) hours written Notice to the Defaulting Party before the suspension may be terminated.

**6.02.2 Termination.** If an Event of Default occurs other than as specified in Section 2.05.1.1, any Non-Defaulting Party shall possess the right to terminate the Agreement between the Parties upon written Notice (by facsimile or other reasonable means) to the Defaulting Party and the other remaining Party, such Notice of termination shall be effective immediately upon receipt. If a Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if all Parties agree to an extension), then such right of termination shall no longer be available to any Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this 30-day requirement for exercising termination rights shall not apply to defaults pursuant to Sections 6.01.4 or 6.01.5.3. Upon termination, the Non-Defaulting Party shall liquidate the Agreement as soon as practicable.

## ARTICLE 7.

### NOTICES AND CONTACT INFORMATION

**7.01 Notices.** Not later than thirty (30) Days after the date the Agreement is signed by all Parties, each Party shall appoint a Representative, as identified in Exhibit C, to coordinate the implementation of this Agreement with the other Parties (each a "Representative" and collectively the "Representatives") and to receive official Notices under the Agreement. Any Party may change their Representative by providing thirty (30) Days' Notice to the other Parties. All Notices and statements other than invoices, payments and scheduling requests shall be in writing and shall be sent to the Representative specified in Exhibit C except where this Agreement expressly provides that notice may be made by telephone.

**7.02 Delivery of Notices.** All Notices may be delivered by mail, hand delivery, overnight delivery, facsimile or e-mail. Notices sent by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the Day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a Day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notices by hand delivery or overnight delivery shall be deemed to have been received upon delivery. Notices by mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notices sent by e-mail must be confirmed by e-mail as received by the receiving Party and shall be deemed to have been delivered at the time and date set out in such confirming e-mail.

**7.03 Contact Information.** The Parties acknowledge and agree that those persons other than the Representatives set forth in Exhibit C are designated by each Party as their respective designated representatives to act on their behalf for the specific purposes described therein. A Party may change its contact information by providing Notice of same in accordance herewith.

## **ARTICLE 8.**

### **FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY**

**8.01 Effect of Force Majeure.** To the extent any Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement, and such Party (the "**Claiming Party**") gives Notice and details of the Force Majeure to the Parties as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) to the extent performance is prevented. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Parties shall not be required to perform or resume performance of their obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

**8.02 Notice of Force Majeure.** As soon as reasonably practicable following the commencement of a Force Majeure event, the Claiming Party shall provide the other Parties oral notice of the Force Majeure event. The Claiming Party shall also provide written Notice to the other Parties as soon as reasonably practicable following the commencement of a Force Majeure event, but in no event later than two (2) weeks after the commencement of a Force Majeure event, which written Notice shall be in the form of a letter describing the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide written Notice within two (2) weeks after the commencement of a Force Majeure event constitutes a waiver of a claim of Force Majeure.

**8.03 Indemnity.** Bullitt shall indemnify, defend and hold harmless the City of Seattle from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character asserted or arising from, on account of, or in connection with (1) any event, circumstance, act or incident related to this Agreement, stemming from operations of the Energy Efficiency Facility, and first occurring or existing during the period when control and title to the Metered Energy Efficiency or Environmental Attributes is vested in such Bullitt; and (2) any event circumstance, act or incident related to this Agreement, and arising out of the construction, operation or maintenance of the Energy Efficiency Facility provided, however, nothing herein shall require Bullitt to so indemnify and hold harmless Seattle to the extent of the negligence of Seattle, its officials, employees, agents, consultants, contractors, representatives, invitees or licensees. CCSDC shall indemnify, defend and hold harmless Seattle from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character asserted or arising from, on account of, or in connection with (1) any event, circumstance, act or incident related to this Agreement, stemming from operations of the Bullitt Center; and (2) any event circumstance, act or incident related to this Agreement, and arising out of the CCSDC's landlord tenant relationships, provided however, nothing herein shall require CCSDC to so indemnify and hold harmless Seattle to the extent of the negligence of Seattle, its officials, employees, agents, consultants, contractors, representatives, invitees or licensees. To the extent

allowable by law, including R.C.W. 35.32A.090, Seattle shall indemnify, defend and hold harmless Bullitt and CCSDC from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character asserted or arising from, on account of, or in connection (1) with any event, circumstance, act or incident related to this Agreement, stemming from Seattle's negligence or breach of contract.

**8.04 Title 51 Waiver.** As between the Parties and solely for the purpose of effectuating the indemnities contained in Section 8.03, Bullitt expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, Revised Code of Washington Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington. This section shall not be interpreted or construed as a waiver of Bullitt's right to assert any such immunity, defense or protection directly against any of its own employees or such employee's estate or other representatives. As between the Parties and solely for the purpose of effectuating the indemnities contained in Section 8.03, CCSDC expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, Revised Code of Washington Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington. This section shall not be interpreted or construed as a waiver of CCSDC's right to assert any such immunity, defense or protection directly against any of its own employees or such employee's estate or other representatives. This section 8.04 has been mutually negotiated by the Parties.

**8.05 Limitation of Remedies, Liability and Damages.** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS

SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY; SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATION HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE 9.**  
**DISPUTE RESOLUTION**

**9.01 Initiating Dispute Resolution.** Any Party may give the other Parties written Notice of any dispute with respect to any Party's performance under this Agreement that is not resolved in the normal course of business. Following receipt of Notice of dispute, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within ten (10) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute, executives of both parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within fifteen (15) business Days after delivery of such Notice, and thereafter as

often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

**9.02 Mediation.** If the above-described executives fail to resolve the dispute within one hundred eighty (180) Days after the delivery of Notice of dispute, then any Party may require one or both of the other Parties to submit to non-binding mediation with the assistance of a neutral, unaffiliated mediator. The mediator shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the mediation (except as a prior mediator). Mediation shall take place in Seattle, Washington. If the Parties are unable to resolve the dispute through the foregoing non-binding procedures, each Party shall have the full right to seek resolution of the dispute through legal action. Each Party shall be responsible for its own costs incurred during the foregoing non-binding procedures and for one half the cost of the single mediator jointly chosen by the Parties.

**9.03 Jurisdiction and Venue.** Any disputes arising out of, in connection with or with respect to this Agreement, the subject matter of this Agreement, the performance or non-performance of any obligation under this Agreement that cannot be resolved in accordance with this Article 9 shall be adjudicated in King County Superior Court, King County, Washington and nowhere else. Each of the Parties irrevocably consents to the jurisdiction of such Court.

**9.04 Governing Law.** The obligations of each Party under this Agreement shall in all respect, including all matters of construction, validity and performance, be governed by and construed in accordance with the laws of the State of Washington (without reference to any rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

## ARTICLE 10.

### REPRESENTATIONS AND WARRANTIES

**10.01 Representations and Warranties.** Each Party hereto represents and warrants to the other Party that:

10.01.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct its business in the state of Washington;

10.01.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action or will be so authorized by the first Day of the Term and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party, or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to such Party;

10.01.3 This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

10.01.4 There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and

10.01.5 To the Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body that would materially adversely affect its ability to perform its obligations under this Agreement.

**10.02 Bullitt's Additional Representations and Warranties.** Bullitt hereto represents and warrants to Seattle that:

10.02.1 Bullitt has or will develop, obtain all necessary permits and authorizations and construct the Energy Efficiency Facility at no cost to Seattle;

10.02.2 The Energy Efficiency Facility has or will be designed, engineered, constructed, installed and operated in compliance with all permits and Applicable Law and in accordance with Prudent Electrical Practice and is

such manner as to have a reasonably expected useful life of no less than the full term of the Agreement, and;

10.02.3 All Metered Energy Efficiency generated by the Energy Efficiency Facility will be fueled solely either by efficiency, or on-site generation meeting the definitions of a renewable resource that complies with the definitions of Chapters 19.285.060 and 19.280.020 of the Revised Code of Washington in effect as of the date of signing of the Agreement; and

10.02.4 Bullitt owns the entire EnergyTenancy rights in the Bullitt Center and has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of the EnergyTenancy rights to any entity other than Seattle.

10.02.5 Bullitt owns or will own the Environmental Attributes associated with the Metered Energy Efficiency of the Energy Efficiency Facility as they are created and has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, the Environmental Attributes to any entity other than Seattle.

**10.03 CCSDC's Additional Representations and Warranties.** CCSDC represents and warrants to Seattle that it has and will maintain complete operational ownership rights the Bullitt Center and will not sell, pledge, assign, transfer or otherwise dispose of such ownership rights in any way that would materially reduce Seattle's ability to rely on its performance under this Agreement.

**10.04 Seattle's Additional Representations and Warranties.** Seattle represents and warrants to Bullitt that Seattle has taken all actions required for the valid execution and delivery by Seattle of this Agreement.

## ARTICLE 11.

### MISCELLANEOUS

**11.01 Amendments.** This Agreement may be amended or modified only by a written agreement hereafter entered into by Seattle, CCSDC and Bullitt and

executed by the General Manager/CEO of Seattle's City Light Department and an authorized representative of both Bullitt and CCSDC.

**11.02 Nonwaiver.** The failure of any Party to insist upon or enforce strict performance by any 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 such Party's right to assert or rely on any such provision or right in that or any other instance; rather, the same shall be shall remain in full force and effect. Any waiver at any time by any Party of any of its rights under this Agreement in a particular circumstance or instance shall not constitute a waiver thereof in any other circumstance or instance.

**11.03 Entire Agreement; Interpretation.** This Agreement and exhibits hereto, together with the Meter Service Agreement, including any exhibits thereto, constitute, on and as of the date hereof, the entire agreement of the Parties with respect to the subject matter hereof and thereof, and all prior agreements, whether written or oral, between the Parties with respect to the subject matter hereof and thereof are hereby superseded in their entireties. It is expressly noted that the Parties are or may be parties to agreements dealing with other subject matter, such as but not necessarily limited to Seattle Municipal Code provisions, customer services agreements for electric service, and interconnection, and net metering agreements related to the solar array at the Facility Site; such other conditions and agreements are not replaced, negated or in any way limited hereby. In the event of conflict, the body of this Agreement shall prevail over its exhibits. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and *vice versa*, as the context so requires. Each provision of this Agreement is the product of negotiation between the Parties. Any rule of interpreting ambiguities against the interest of the drafting party shall not be applied in resolving any dispute over the meaning of any provision of this Agreement or the intent to of the Partied with respect to such provision.

**11.04 Headings.** The article, section and paragraph headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any of the terms or provision of this Agreement.

**11.05 Assignment.** No Party may assign its rights or obligations under this Agreement without each of the other Parties' prior written consent. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assignees. If any Party wishes to assign this Agreement, it shall provide the other two Parties with a detailed description of the proposed assignee and the circumstances of the proposed assignment.

**11.06 Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**11.07 Implementation.** Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Parties for the implementation and continuing performance of this Agreement.

**11.08 Relationship of Parties.** Nothing contained in this Agreement shall be construed to create an agency, association, joint venture, trust or partnership, or impose an agency, trust or partnership covenant, obligation or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. All rights and obligations of the Parties are several, not joint. No Party shall be deemed to control, to be under the control of, or to be the agent of, any other Party.

**11.09 No Dedication of Facilities.** No undertaking by one Party to any other Party under any provision of this Agreement shall constitute the dedication of the electric system (or any portion thereof) of the undertaking Party to the public or to such other Party, and it is understood and agreed that any such undertaking under

any provision of this Agreement by a Party shall cease upon the termination, cancellation or completion of such Party's obligations under this Agreement.

**11.10 No Third Party Beneficiaries.** Except as expressly provided otherwise, this Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

**11.11 Survival.** Sections 5.05, 5.06, 5.07, 8.03, 8.04, 8.05, 11.12, 11.13 and 11.14 shall survive the termination, cancellation or expiration of this Agreement.

**11.12 Governing Law.** The obligations of each Party under this Agreement shall in all respect, including all matters of construction, validity and performance, be governed by and construed in accordance with the laws of the State of Washington (without reference to any rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

**11.13 Judgments and Determinations.** When it is provided in this Agreement that either Party shall determine or make a determination or judgment, or that any action, determination or judgment shall be in such Party's determination or judgment, the exercise of such determination or judgment shall be made solely by such Party and shall be final and not subject to challenge, so long as such Party exercises its determination or judgment (i) in good faith and not arbitrarily and capriciously and (ii) consistent with Prudent Electrical Practice.

**11.14 Records and Audits.** Each Party shall keep complete and accurate records and shall maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates, or statements of charges or a given invoice or any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder, or as required by Applicable Law. All such records shall be retained until the later of (i) three (3) calendar years following the calendar year in which such records were created, (ii) any applicable requirement of Applicable Law or (iii) if there is a dispute relating to that invoice, the date on which the dispute is resolved. Each Party shall have the right, upon reasonable Notice to

the other Party and during the other Party's regular business hours, to audit, at its own cost, all of the other Party's metering records, accounting records and supporting documents of any billing or delivery of Metered Energy Efficiency and Environmental Attributes associated with this Agreement.

**11.15 Time.** Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific Standard or Pacific Daylight Savings Time, whichever is then prevailing.

**11.16 Insurance.** Bullitt shall maintain in effect during Term an insurance policy for comprehensive general liability in the amount of \$2,000,000 to provide protection against claims for damages resulting from Bullitt's operations under this Agreement. Bullitt shall cause Seattle to be named as an additional insured on the policy.

**11.17 Forward Contract.** The Parties intend that this Agreement and the transactions contemplated by this Agreement constitute a "Forward Contract" within the meaning of the United States Bankruptcy Code and that Bullitt is a "Forward Contract Merchant" within the meaning of the United States Bankruptcy Code.

**11.18 Confidentiality.** To the extent possible under applicable law, the Parties will keep each other's proprietary information confidential, and subject to the restriction that the information will be used solely as working data to implement this Agreement during the term of this Agreement and for a period of eighteen (18) months thereafter. The Parties recognize that the Agreement will be a matter of public record, subject to redaction for uniquely proprietary content as agreed. All Parties further recognize that in the negotiation of this first-of-its-kind agreement, to ensure the broadest possible comfort in the sharing of information during the contract development phase, all parties agree to regard information other than that incorporated in final contract to be confidential, protected from disclosure to the public or third parties. The following principles apply to, and limit, Seattle's obligations during the period covered by this confidentiality clause: (i) Seattle is subject to RCW 42.56 et seq., Washington's public records act; (ii) any party who wishes to keep material confidential must mark such documents "confidential"; (iii) Seattle shall take

no risk involved in attempting to keep any records confidential; (iv) rather, the City will provide 10 days' Notice to a Party whose previously identified confidential records are the subject of a public records request, and unless Seattle is prevented by a restraining order from producing such documents to a requestor, or the requestor withdraws its request in that period, Seattle may disclose such documents. However, Seattle will not disclose information that, under applicable laws governing Seattle's customer records, would constitute disclosure of information those applicable laws prohibit, except after compliance with such laws.

**11.19 Further Assurances.** The parties will cooperate in good faith, and approve and execute such further documents and agreements, as may be reasonably necessary to realize the purposes of this Agreement including (but not limited to) obtaining any incentives or other support available to the other under applicable programs and law. However, no Party will be obligated to incur any additional third party expense unless promptly reimbursed for such expense, or to execute any document or agreement that materially increases its obligations, or reduces its rights, under this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first set out above.

**THE BULLITT FOUNDATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CASCADIA CENTER FOR SUSTAINABLE DESIGN AND CONSTRUCTION**

By:

---

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:

---

**THE CITY OF SEATTLE,  
CITY LIGHT DEPARTMENT**

By:

---

Jorge Carrasco

CEO & General Manager

Date

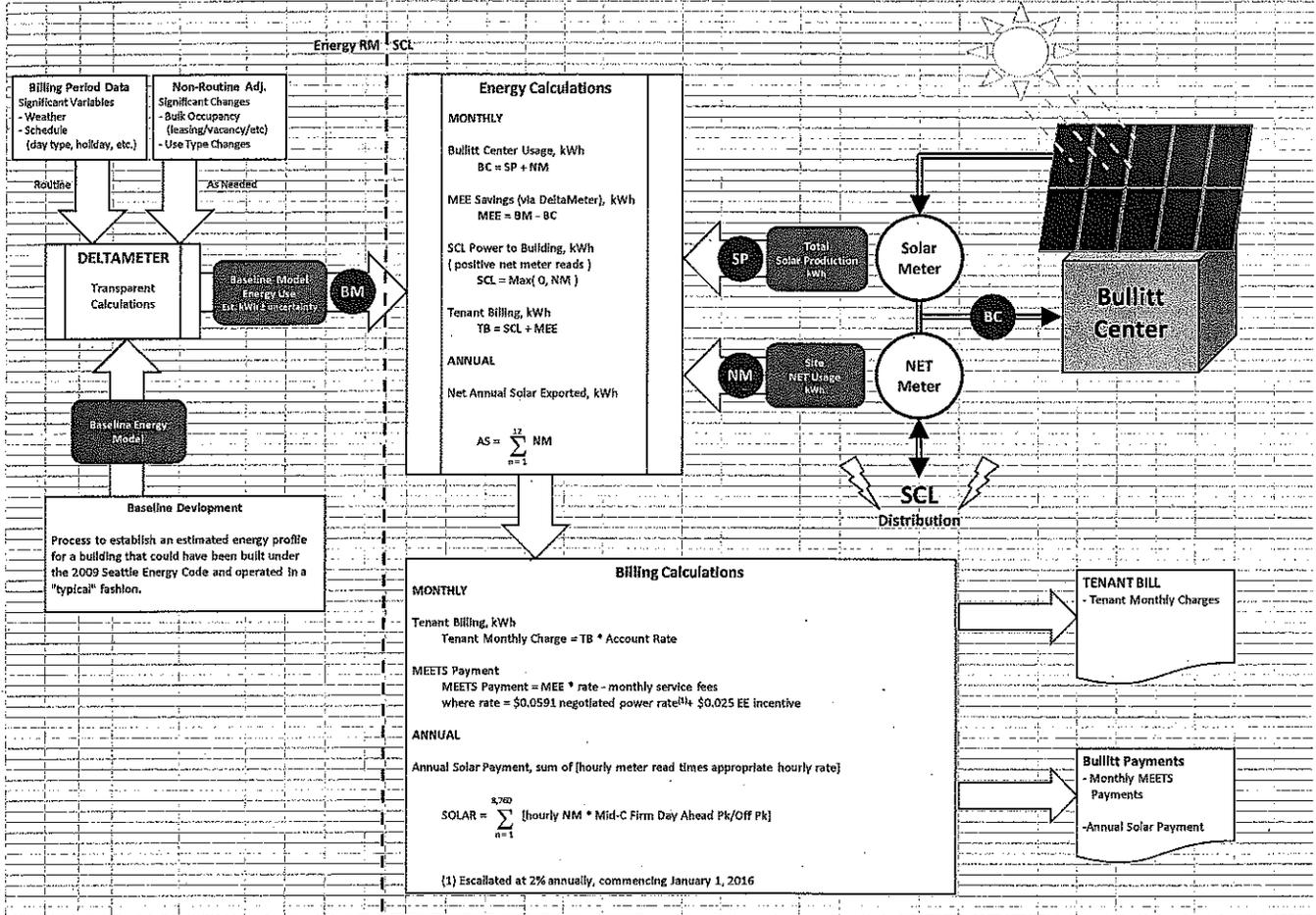
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**EXHIBIT A**  
**Bullitt Center Pay-for-Performance – Example Billing Computation**

<b>Typical Meter Readings:</b>			
<b>Bullitt Center Energy Use (kWh)</b>			
	Solar Production	30,000	(SP)
(+)	Site Net Meter	(22,000)	(NM)
=	Total Site Consumption	8,000	(BC)
<b>SCL Energy Delivery to Building (kWh)</b>			
	Site Net Meter	(22,000)	(NM)
	SCL	-	(SCL) (If less than zero = 0)
<b>DeltaMeter Calculations (kWh)</b>			
	Standard Site Baseline	55,000	(BM) (This is an adjusted baseline based on temperature and occupancy)
(-)	Total Site Consumption	8,000	(BC)
=	Metered Energy Efficiency	47,000	(MEE)
<b>Tenant Billing (kWh)</b>			
	SCL	-	(SCL) (Assumes all cumulative negative readings have been offset by positive readings)
(+)	Metered Energy Efficiency	47,000	(MEE)
=	Total Tenant Bill (kWh)	47,000	(TB)
<b>Tenant Billing (\$)</b>			
	Tenant rate (1), typical for Month =	\$ 0.0606	/kWh
x	Total Tenant Bill (kWh)	47,000	kWh
=	Total Tenant Energy Bill	\$ 2,848.20	
<b>MEETS Payment (\$)</b>			
	MEETS Rate (energy)	\$ 0.0591	/kWh
+	MEETS Incentive	\$ 0.0250	/kWh
=	Total MEETS	\$ 0.0841	
x	Metered Energy Efficiency	47,000	
=	MEETS Energy & Incentive Payment	\$ 3,952.70	
Note: Excess net generation will be rolled forward on future bills until the excess energy have been consumed.			
Excess energy will be trued up annually.			
Applicable retail rate will be for Bullitt Center as a Standard Site building, which applicable rate will be determined by SCL staff. Applicable retail rate definition and the retail rate are set by and may be periodically modified by Seattle City Council by Ordinance. The illustrated rate is an assumed average dollars per kWh. The total dollars recover all extant applicable retail rate components' charges, including, for illustration, energy, demand, and customer service/base connection charges.			

EXHIBIT B

Bullitt Center Energy Accounting Example - For Discussion Purposes Only



**EXHIBIT C**  
**CONTACT INFORMATION**

DATE OF LAST UPDATE: \_\_\_\_\_

<p><b>Representative of Bullitt:</b></p> <p>Name: Denis Hayes</p> <p>Title: President, The Bullitt Foundation</p> <p>Regular mailing address: Company Name: The Bullitt Foundation</p> <p>Street: 1501 East Madison Street</p> <p>City, State: Zip: Seattle, WA 98122</p> <p>Overnight delivery address: Same as above</p> <p>Phone: _____</p> <p>Facsimile: _____</p> <p>Email: _____</p>	<p><b>Representative of The City of Seattle, Seattle Department:</b></p> <p>Name: Dan Langdon Title: Electrical Service Representative</p> <p>Regular mailing address: Seattle City Light</p> <p>PO Box 34023 Seattle, WA 98124-4023</p> <p>Overnight delivery address: 700 Fifth Avenue, Suite 3220 Seattle, WA 98104</p> <p>Phone: 206-684-8441</p> <p>Facsimile: Email: dan.langdon@seattle.gov</p>
<p><b>Operations:</b></p> <p>Attn: _____</p> <p>Phone: _____</p> <p>Facsimile: _____</p>	

Email: _____	
<b>Invoices and payments:</b> Attn: _____ Phone: _____ Facsimile: _____ Email: _____	<b>Invoices and payments:</b> Attn: <u>Robin Cross</u> Phone: <u>(206) 684-3392</u> Facsimile: <u>(206) 386-4555</u> Email: <u>scipoweraccounts@seattle.gov</u>
<b>Credit and Collections:</b> Attn: _____ Phone: _____ Facsimile: _____ Email: _____	<b>Credit and Collections:</b> Attn: <u>Mike Yaley</u> Phone: <u>(206) 233-2756</u> Facsimile: <u>(206) 287-5120</u> Email: <u>mike.yaley@seattle.gov</u>

DATE OF LAST UPDATE: \_\_\_\_\_

<b>Representative of CCSDC:</b>  Name: _____ Title: _____  Regular mailing address: Company Name: _____ Division: _____ Street: _____	
---	--

<p>City, State: Zip: _____</p> <p>Overnight delivery address:</p> <p>Street: _____</p> <p>City, State: Zip: _____</p> <p>Phone: _____</p> <p>Facsimile: _____</p> <p>Email: _____</p>		
<p><b>Operations:</b></p> <p>Attn: _____</p> <p>Phone: _____</p> <p>Facsimile: _____</p> <p>Email: _____</p>		
<p><b>Invoices and payments:</b></p> <p>Attn: _____</p> <p>Phone: _____</p> <p>Facsimile: _____</p> <p>Email: _____</p>		
<p><b>Credit and Collections:</b></p> <p>Attn: _____</p>		

Michael Thomas Little  
SCL Metered Energy Efficiency Purchase Agreement ORD ATT 1  
August 28, 2014  
Version 2

Phone: _____	
Facsimile:	
Email: _____	

Payments for the DeltaMeter for Bullitt Center Metered Energy Efficiency Purchase Agreement (MEEPA)

– a Summary

8/28/14

Fee Type	Ideal Procedure	At Bullitt & First Three Years	Years 4 & Beyond
Meter Setup	Paid by SCL. SCL recovers from Bullitt via MEEPA.	NEEA covering via direct payment to EnergyRM	n/a
Monthly License, Calibration for Routine Changes to Building <sup>2</sup> , & Reporting of Monthly Readings	Paid by SCL. SCL recovers from Bullitt via MEEPA. Flat monthly charge. \$250/month.	NEEA covering via direct payment to EnergyRM	Paid by SCL. SCL to deduct from MEEPA payment.
Calibration and Reporting for Non-Routine Changes <sup>3</sup> to Building	Paid by SCL. SCL recovers from Bullitt via MEEPA. Time and materials invoiced. Hourly rates: CEO: \$450 Chief Technology Officer: \$350 Director of M&V: \$320 Senior Engineer: \$225 Junior Engineer: \$175 Software Programmer: \$200	NEEA covering via direct payment to EnergyRM	Paid by SCL. SCL to deduct from MEEPA payment.

<sup>2</sup> "Routine changes to building" encompass routine neutral factors as defined by IPMVP, which include the building's experience of weather, within the accuracy specification and method of the DeltaMeter Operation and Calibration Protocol.

<sup>3</sup> "Non-Routine Changes to Building" encompass all non-routine neutral factors as defined by IPMVP, which include the building's experience of occupancy, use type and intensity changes, and physical structural modifications undertaken for unrelated reasons, all within the accuracy specification and method of the DeltaMeter Operation and Calibration Protocol.

Annual Testing	Paid by SCL. SCL recovers from party requesting annual testing	If NEEA testing is insufficient, paid by SCL. Recovered by SCL from party requesting annual testing.	Near the conclusion of the Pilot Phase, SCL, Bullitt, and EnergyRM will agree to the scope and magnitude of Annual Testing for the duration of MEEPA. The costs of this testing will be paid by SCL. SCL to deduct these costs from MEEPA payment. Any additional testing requested beyond that agreed to per above will be paid by SCL, and recovered by SCL from party requesting additional annual testing.
Support for records inspection and audit processes (beyond normal monthly reporting)	Paid by SCL. SCL recovers from party requesting additional information.	Paid by SCL. Recovered by SCL from party requesting additional information.	Paid by SCL. Recovered by SCL from party requesting additional information.
Meter Challenges	Paid by non-prevailing party.	Paid by SCL. Recovered by SCL from party requesting additional information.	Paid by SCL. Recovered by SCL from party requesting additional information.
Additional R&D	Paid by party initiating/requesting the R&D	Paid by party initiating/requesting the R&D	Paid by party initiating/requesting the R&D
Complexities associated with integrating with the SCL billing system	Paid by SCL.	Paid by SCL.	Paid by SCL.

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
City Light	Mike Little 684-3233	Saroja Reddy 615-1232

**Legislation Title:**

AN ORDINANCE relating to the City Light Department; authorizing the execution of a Metered Energy Efficiency Purchase Agreement with The Bullitt Foundation and the Cascadia Center for Sustainable Design and Construction for the purchase of energy from the Bullitt Center.

**Summary of the Legislation:**

This legislation approves a Metered Energy Efficiency Purchase Agreement with The Bullitt Foundation and the Cascadia Center for Sustainable Design and Construction. The agreement spells out the terms and conditions under which City Light would purchase electricity from the Bullitt Center as the value of the energy conservation based upon the energy modeling of a similarly constructed building. This agreement to purchase the energy output is considered a pilot for the first three years with the expectation that the long term contract may need to be modified as a result of the information learned during the pilot period. Because City Light's authority to purchase power, including energy savings, is limited to a time period of two years, we are seeking authority to enter into this agreement.

**Background:**

Energy conservation continues to be City Light's first priority energy resource, and City Light continuously seeks out innovative ways to partner with customers and trade allies to meet its energy savings targets. City Light provides financial incentives to help customers overcome barriers to investing in cost-effective energy conservation, and under its current program design, that typically involves a single up-front payment once conservation measures have been installed, inspected and the energy savings verified.

The Bullitt Foundation constructed the Bullitt Center as a Living Building Challenge project with the intent to be a net-zero energy building. Given the nature of the building design, its operation, and a significant solar photovoltaic system, the traditionally structured energy conservation incentive would not provide an appropriate price signal to undertake such a project. The Bullitt Foundation, Cascadia Center for Sustainable Design and Construction, and City Light have been engaged in discussions to establish a Metered Energy Efficiency Purchase Agreement. The energy conservation will be estimated on the energy modeling of a similarly constructed building defined as a Standard Site. The energy savings from the conservation-related measures are viewed as a traditional generating facility and the conserved energy would be available for purchase by the utility.

City Light's current authority for agreements to purchase energy, interpreted to include acquiring energy conservation savings, is limited to two years. This agreement involves energy conservation payments to be made over the three-year pilot period and could be extended to a twenty-year period. With this Ordinance, City Light is seeking authority to enter into this agreement with The Bullitt Foundation.

City Light will use its conservation incentive budget to fund this contract, so no additional budget authorization is required in the near term. And, the incentive payments are not so significant as to cause concern for future budgets.

Please check one of the following:

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

Yes. The incentives paid to the Bullitt Foundation will provide cost-effective energy savings to the Conservation Resources Division and to the Department. This incentive payment structure might be applicable to other buildings within the City Light service territory and in the future, it could expand the tools available to City Light to encourage energy conservation.

**b) What is the financial cost of not implementing the legislation?**

None

**c) Does this legislation affect any departments besides the originating department?**

No

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives? None**

**e) Is a public hearing required for this legislation?**

No

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

**g) Does this legislation affect a piece of property?**

Michael Thomas Little  
SCL Metered Energy Efficiency Purchase Agreement FISC  
Aug 28, 2014  
Version #2

No

**h) Other Issues: None**

**List attachments to the fiscal note below:**  
None.



City of Seattle  
Edward B. Murray  
Mayor

September 16, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council bill that provides City Light's General Manager and Chief Executive Officer, or his designee, the authority to execute a Metered Energy Efficiency Purchase Agreement with The Bullitt Foundation and the Cascadia Center for Sustainable Design and Construction. The agreement spells out the terms and conditions under which City Light would purchase electricity from the Bullitt Center as a pay for performance contract based on the value of the energy conservation compared to the performance of a similarly code constructed building. This agreement to purchase the energy output is a twenty year contract, the first three years of which consist of a pilot period. Since City Light's authority to purchase power, including energy savings, is limited to a time period of two years, we are seeking authority to enter into this agreement

City Light is continuously seeking out innovative ways to partner with customers and trade allies to meet its energy savings targets. City Light provides financial incentives to help customers overcome barriers to investing in cost-effective energy conservation, and under its current program design, that typically involves a single up-front payment once conservation measures have been installed, inspected and the energy savings verified.

The Bullitt Foundation constructed the Bullitt Center as a Living Building Challenge project with the intent to be a net-zero energy building. The Bullitt Foundation and City Light have been engaged in discussions to establish a Metered Energy Efficiency Purchase Agreement that spells out the terms and conditions under which City Light would purchase electricity.

This effort is the latest example of the utility's leadership and innovation in working with customers and trade allies to promote energy conservation and its economic and environmental benefits. Thank you for your consideration of this legislation. Should you have any questions, please contact Michael Jones at 684-3243.

Sincerely,

Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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