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BOOK 787 PAGE 639

RETURN ADDRESS:

P.U.D. No. 1 of Skamania County
P O Box 500
Carson, WA 98610

FILED FOR RECORD
SKAMANIA CO. WASH
BY P.U.D.

MAR 23 12 50 PM '99
GARY M. OLSON
AUDITOR

Please Print or Type Information.

Document Title(s) or transactions contained therein:

1. First Amended Energy Services Enterprise Project Organizational Agreement
- 2.
- 3.
- 4.

GRANTOR(S) (Last name, first, then first name and initials)

1. Conservation & Renewable Energy System (CARES)
 2. PUD No. 1 of Benton County
 3. PUD No. 1 of Grays Harbor
 4. PUD No. 1 of Klickitat County
- ☒ Additional Names on Page 1 of Document.

GRANTEE(S) (Last name, first, then first name and initials)

1. Energy Services Enterprise Project (ESE)
 - 2.
 - 3.
 - 4.
- ☐ Additional Names on Page of Document.

LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section Township, Range, Quarter/Quarter)

n/a

- ☐ Complete Legal on Page of Document.

REFERENCE NUMBER(S) Of Document assigned or released:

Unrecorded Energy Services Enterprise Project Organizational Agreement
dated 9/23/97 attached hereto on page 9.

- ☐ Additional Numbers on Page 9 of Document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

- ☐ Property Tax parcel ID is not yet assigned.
☐ Additional Parcel Numbers on Page of Document.

The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

**FIRST AMENDED
ENERGY SERVICES ENTERPRISE PROJECT
ORGANIZATIONAL AGREEMENT**

This FIRST AMENDED ENERGY SERVICES ENTERPRISE PROJECT ORGANIZATIONAL AGREEMENT (the "First Amended Agreement"), effective January 1, 1999, is an amendment to the ENERGY SERVICES ENTERPRISE PROJECT ORGANIZATIONAL AGREEMENT effective September 23, 1997, (the "ESE Organizational Agreement") entered into by the CONSERVATION AND RENEWABLE ENERGY SYSTEM ("CARES"), PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY ("Benton PUD"), PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY ("Grays Harbor PUD"), and PUBLIC UTILITY DISTRICT NO. 1 OF KLIKITAT COUNTY ("Klickitat PUD"), and further constitutes an agreement among CARES, Benton PUD, Grays Harbor PUD, Klickitat PUD, and PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY ("Franklin PUD"), PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY ("Pacific PUD"), and PUBLIC UTILITY DISTRICT NO. 1 OF SKAMANIA COUNTY ("Skamania PUD"), and pursuant to which Franklin PUD, Pacific PUD, and Skamania PUD will become Participating Members of the CARES Energy Services Enterprise Project ("ESE" or "the Project") as provided below. CARES, Benton PUD, Franklin PUD, Grays Harbor PUD, Klickitat PUD, Pacific PUD, and Skamania PUD are sometimes collectively referred to in this First Amended Agreement as the "Parties."

1. **Effect of Energy Services Enterprise Project Organizational Agreement.** Except as provided in this First Amended Agreement, the Parties agree to be bound by the terms of the ESE Organizational Agreement, which, to that extent, is incorporated by this reference.

2. **Franklin PUD, Pacific PUD, and Skamania PUD Entry as Participating Member.** Effective January 1, 1999, Franklin PUD, Pacific PUD, and Skamania PUD are Participating Member of ESE and, except as provided in this First Amended Agreement, have all the rights and obligations of a Participating Member set forth in the ESE Organizational Agreement.

3. **Entry Fee.** No later than January 17, 1999, Franklin PUD will pay the amount of one hundred fifteen thousand, four hundred twenty-six dollars (\$115,426), Pacific PUD will pay the amount of sixty-four thousand, three hundred twenty-eight dollars (\$64,328), and Skamania PUD will pay the amount of thirty thousand, five hundred eighty five dollars (\$30,585) payable to CARES, to be deposited in the CARES ESE account.

4. **Additional Funding.** Section 2b of the ESE Organizational Agreement is amended to provide that the contribution of each Participating Member to any additional funding by the Participating Members shall be based upon the following percentages: Benton PUD - 35.5%; Franklin PUD - 16.1%; Grays Harbor PUD - 27.4%; Klickitat PUD - 7.9%, Pacific PUD - 8.8%, Skamania PUD - 4.3%. If additional members join, the percentages would be recomputed to reflect, proportionally, participation by additional members.

ESE FIRST AMENDED AGREEMENT

5. **Executive Committee.** Section 4 of the ESE Organizational Agreement is amended as follows: Franklin PUD, Pacific PUD, and Skamania PUD shall collectively appoint a maximum of two persons to the Executive Committee, and two alternates. Each such person appointed to the Executive Committee shall be entitled to one vote. Benton PUD, Grays Harbor PUD, and Klickitat PUD shall each be entitled to appoint a member and alternate to the Executive Committee for so long as this First Amended Agreement is in force, unless they unanimously agree that one or more of them shall no longer be entitled to appoint a member and alternate to the Executive Committee.

6. **Allocation of Risks and Benefits.** For the purpose of determining the allocation of financial benefits and risks in proportion to Participating Member funding advances as set forth in Section 14 of the ESE Organizational Agreement, (1) the monetary funding advances of: (1) Franklin PUD shall be calculated as eighty-two thousand, one hundred fifty-four dollars (\$82,154) (original subscription amount), plus any future additional funding by Franklin PUD as provided in Section 2(b) of the ESE Organizational Agreement; (2) Pacific PUD shall be calculated as forty-five thousand, seven hundred eighty-five dollars (\$45,785) (original subscription amount), plus any future additional funding by Pacific PUD as provided in Section 2(b) of the ESE Organizational Agreement; (3) Skamania PUD shall be calculated as twenty-one thousand, seven hundred sixty nine dollars (\$21,769) (original subscription amount), plus any future additional funding by Skamania PUD as provided in Section 2(b) of the ESE Organizational Agreement.

7. **Repayment of Advances.** With respect to repayment of advances pursuant to Section 15 of the ESE Organizational Agreement, Franklin PUD's, Pacific PUD's, and Skamania PUD's advances shall be calculated as the entry fee provided in Section 3 of this First Amended Agreement.

8. **Approval of ESE Business Plan.** By executing this First Amended Agreement, Franklin PUD, Pacific PUD, and Skamania PUD hereby approve the Revised December, 1999, ESE Business Plan.

9. **Approval of ESE Line of Credit.** By execution of this First Amended Agreement, Franklin PUD, Pacific PUD, and Skamania PUD agree to execute an Energy Services Implementation Agreement in substantially the form of the Energy Services Implementation Agreement effective July 1, 1998, executed by CARES, Benton PUD, Grays Harbor PUD, and Klickitat PUD, and hereby approve an extension of the ESE line of credit in the amount of two-hundred ten thousand, three hundred thirty-nine (\$210,339). If a Participating Member withdraws from the ESE, that Member shall pay all amounts it has drawn on the ESE line of credit plus interest to the date of payment. From the date of the withdrawal of such Participating Member the amount available on the ESE line of credit shall be reduced by the amount attributable to the withdrawing Participating Member.

10. **Signature Clause.** Each Party to this First Amended Agreement represents that it has the authority to execute this First Amended Agreement and that it has been duly authorized to enter into this First Amended Agreement.

ESE FIRST AMENDED AGREEMENT

11. Counterparts. This First Amended Agreement may be executed in one or more counterparts, and each shall be considered an original when the signatures of each Party have been obtained.

CONSERVATION AND RENEWABLE
ENERGY SYSTEM

By: _____
John Graham
Its: Managing Director

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY

By: _____
James W. Sanders
Its: General Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF FRANKLIN COUNTY

By: _____
Kenneth A. Suggen
Its: Manager

Date: 1/26/99

PUBLIC UTILITY DISTRICT NO. 1
OF GRAYS HARBOR COUNTY

By: _____
Stephen W. Romjue
Its: General Manager

Date: _____

FSE FIRST AMENDED AGREEMENT

CONSERVATION AND RENEWABLE
ENERGY SYSTEM

By: _____
John Graham
Its: Managing Director

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY

By: James W. Sanders
James W. Sanders
Its: General Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF FRANKLIN COUNTY

By: _____
Kenneth A. Sugden
Its: Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF GRAYS HARBOR COUNTY

By: _____
Stephen W. Romjue
Its: General Manager

Date: _____

FSE FIRST AMENDED AGREEMENT

11. Counterparts. This First Amended Agreement may be executed in one or more counterparts, and each shall be considered an original when the signatures of each Party have been obtained.

CONSERVATION AND RENEWABLE
ENERGY SYSTEM

By: _____
John Graham
Its: Managing Director

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY

By: _____
James W. Sanders
Its: General Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF FRANKLIN COUNTY

By: _____
Kenneth A. Sugden
Its: Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF GRAYS HARBOR COUNTY

By: Stephen W. Romjue
Stephen W. Romjue
Its: General Manager

Date: _____

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**PUBLIC UTILITY DISTRICT NO. 1
OF KLICKITAT COUNTY**

By: Brian L. Skeahan
Its: General Manager

Date: 1/12/99

**PUBLIC UTILITY DISTRICT NO. 2
OF PACIFIC COUNTY**

By: Douglas L. Miller
Its: General Manager

Date: _____

**PUBLIC UTILITY DISTRICT NO. 1 OF
SKAMANIA COUNTY**

By: Bill Yee
Its: General Manager

Date: _____

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ESE FIRST AMENDED AGREEMENT

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**PUBLIC UTILITY DISTRICT NO. 1
OF KICKITAT COUNTY**

By: _____

Brian L. Skeahan

Its: General Manager

Date: _____

**PUBLIC UTILITY DISTRICT NO. 2
OF PACIFIC COUNTY**

By: Douglas L. Miller

Douglas L. Miller

Its: General Manager

Date: FEBRUARY 3, 1999

**PUBLIC UTILITY DISTRICT NO. 1 OF
SKAMANIA COUNTY**

By: _____

Bill Yee

Its: General Manager

Date: _____

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ESE FIRST AMENDED AGREEMENT

BOOK 187 PAGE 647

PUBLIC UTILITY DISTRICT NO. 1
OF KLICKITAT COUNTY

By: Brian L. Skeahan
Its: General Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 2
OF PACIFIC COUNTY

By: Douglas L. Miller
Its: General Manager

Date: _____

PUBLIC UTILITY DISTRICT NO. 1 OF
SKAMANIA COUNTY

By: William Yee
Its: General Manager

Date: 2-1-99

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ESE FIRST AMENDED AGREEMENT

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Klickitat Co.

AFTER RECORDING MAIL TO:

Name Brian Skeahan - Klickitat PUD
Address 1313 S. Columbus
City/State Goldendale WA 98620

Document Title(s): (or transactions contained therein)

1. Energy Services Enterprise Project Organizational Agreement
- 2.
- 3.
- 4.

GRANTOR (s): (Last name first, then first name and initials)

1. CARES (Conservation and Renewable Energy System)
- 2.
- 3.
- 4.

☐ Additional Names on page _____ of document

GRANTEE (s): (Last name first, then first name and initials)

1. PUD No. 1 of Klickitat County
2. PUD No. 1 of Benton County
3. PUD No. 1 of Grays Harbor County
- 4.

☐ Additional Names on page _____ of document

Abbreviated Legal Description as follows: (i.e. lot/block/plot or section/township/range/quarter/quarter)

☐ Complete legal description is on page _____ of document. N/A

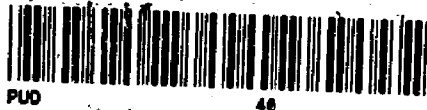
Assessor's Property Tax Parcel/Account Number(s): N/A

Reference Number(s) of Documents assigned or released:

SE 971880.015 (on pages 1-6 of document)

☐ Additional numbers on page _____ of document

NOTE: The Auditor/Recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein



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Benton County

ENERGY SERVICES ENTERPRISE PROJECT
ORGANIZATIONAL AGREEMENT

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This Energy Services Enterprise Project Organizational Agreement (the "Agreement") is entered into by the Conservation and Renewable Energy System ("CARES"); Public Utility District No. 1 of Benton County ("Benton PUD"), Public Utility District No. 1 of Grays Harbor County ("Grays Harbor PUD"), and Public Utility District No. 1 of Klickitat County ("Klickitat PUD") effective 9/23/97, 1997. The public utility districts entering into this Agreement are collectively referred to as "Participating Members". CARES and the Participating Members are sometimes collectively referred to in this Agreement as the "Parties."

Background

In February, 1997, the CARES Board of Directors adopted a strategic business plan for its Energy Services Enterprise Project ("ESE" or the "Project"). During April and May, 1997, a majority of the CARES member utilities approved CARES' undertaking the Project. On May 23, 1997, the CARES Board adopted Resolution No. 97-2, approving CARES' undertaking the Project. On June 26, 1997, the CARES Board adopted Resolution No. 97-4, which authorized the CARES Managing Director to execute a Memorandum of Understanding regarding the Project with Benton PUD and Grays Harbor PUD setting forth their agreement to provide initial funding for the ESE and their agreement concerning certain principles regarding the operation, decision-making structure, continued funding, allocation of risks and benefits, and other provisions relating to the ESE. On June 26, 1997, CARES, Benton PUD, and Grays Harbor PUD executed the ESE Memorandum of Understanding. The Memorandum of Understanding contemplated execution of a more detailed agreement setting forth the rights and obligations of CARES, Benton PUD, and Grays Harbor PUD, and of Klickitat PUD if it chose to become an ESE participating member by July 9, 1997, and other terms and conditions, relating to the Project. Klickitat PUD executed the Memorandum of Understanding on July 8, 1997. This Agreement is the more detailed agreement contemplated in the Memorandum of Understanding and, as of the effective date of this Agreement, supersedes the Memorandum of Understanding.

NOW, THEREFORE, and in consideration of the foregoing, the Parties agree as follows:

1. **ESE Mission.** The ESE mission is to maintain and enhance the competitiveness of public power utilities by: 1) providing strategic vision concerning energy services and the competitive marketplace for public power utilities; 2) developing and delivering energy efficiency and other products and services that strengthen public power utility customer relationships; and 3) establishing strategic alliances supporting the development and delivery of public power energy services.

2. **Funding.**

a. **Initial Funding.** The Parties agree to provide initial funding for a two-year period as follows:

	7/1997	1998	2-year Total
CARES (from its general fund)	\$125,000	\$0	\$125,000
Benton PUD	\$66,759	\$103,847	\$170,606
Grays Harbor PUD	\$54,448	\$84,697	\$139,145
Klickitat PUD	\$16,720	\$26,008	\$42,728

Each Participating Members' initial funding commitment is payable in two installments - the first was due July 1, 1997 and the second is due January 1, 1998, in the amounts set forth in this section. The Parties anticipate that their initial funding commitments will support a two-year period for the Project.

b. **Additional Funding.** Any ESE funding by the initial Participating Members in addition to the initial funding set forth in Section 2(a) shall be determined by majority vote of the Executive Committee established under Section 4 of this Agreement, provided that the contribution of each initial Participating Member to any such additional funding by the initial Participating Members shall be based upon the following percentages: Benton PUD - 48.4%; Grays Harbor PUD - 39.5%; Klickitat PUD - 12.1%. If such additional funding requirement by Participating Members is determined by a non-unanimous vote of the Executive Committee, any Participating Member



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Benton County

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disagreeing with such additional funding requirement may either provide such funding pursuant to the Executive Committee's determination or may withdraw from the Project pursuant to Section 17 of this Agreement. Any funding by CARES in addition to the initial funding set forth in Section 2(a) shall only be as agreed to in writing by CARES.

c. **Payment Obligation not Relieved by Another Party's Payment.** If any Party does not pay any amount it is obligated to pay under this Agreement, the fact that another Party pays that non-paying Party's amount in whole or in part does not relieve the non-paying Party from its payment obligation.

3. **Work Contemplated Under Initial Funding Effort.** Based upon the initial funding commitment by the Parties listed in Section 2 above, the Parties contemplate that the following Project activities will be accomplished: 1) In 1997, business plans for customer-focused audits, power quality, and resource cost accounting will be developed; and 2) in 1998, business plans for additional products/services will be developed. The ESE program plan and schedule may be revised as provided in this Agreement based upon any additional funding and other relevant considerations.

4. **Executive Committee.**

a. **Establishment of Executive Committee.** The CARES Board of Directors hereby establishes an ESE Executive Committee (the "Executive Committee") and delegates certain ESE functions to it as provided in Section 5.

b. **Composition of Executive Committee: Alternates.** The Executive Committee shall be composed of one appointee selected by each Participating Member. Each Participating Member may appoint an alternate appointee to serve in the absence or disability of the regular appointee to the Executive Committee. If other entities in addition to the initial Participating Members become ESE participating members in the future, each of them shall also be entitled to appoint one person to the Executive Committee, and an alternate, unless the Executive Committee determines that additional Participating Members shall not be entitled to representation on the Executive Committee.

c. **Voting Rights.** Each member of the Executive Committee shall have one vote, unless otherwise determined by the Executive Committee. Proxy voting will not be allowed.

d. **Quorum: Voting by Simple Majority.** A majority of the members of the Executive Committee shall constitute a quorum for the transaction of any business. Voting shall be by simple majority of the votes of the Executive Committee members present.

5. **Respective Responsibilities of CARES Board of Directors and ESE Executive Committee.**

a. As provided in this section, certain decisions regarding the Project are reserved to the CARES Board of Directors and certain functions are delegated to the ESE Executive Committee.

b. The following decisions regarding the Project shall be reserved to the CARES Board of Directors:

- 1) Issuance of debt in CARES' name;
- 2) Overall salary ranges and benefits for ESE employees as provided in the CARES policy manual and other overall CARES policies;
- 3) Authorization for any contract or other undertaking purporting to obligate CARES with respect to ESE activities beyond the extent of ESE financial resources or binding commitments therefor, or any insurance related to ESE activities;
- 4) Change in the mission of the Project, provided that the ESE Executive Committee unanimously approves such change; and
- 5) Termination of the Project and this Agreement, provided that such termination shall only be upon the recommendation of the Executive Committee, as provided in Section 18.

c. The CARES Board of Directors, pursuant to RCW 43.52.375, shall authorize the CARES Managing Director to approve or disapprove vouchers for the salaries of ESE employees and other ESE expenses arising in the usual and ordinary course of ESE business, on the recommendation of the Executive Committee.



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Klickitat Co.



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Benton County

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d. A CARES member utility, whether or not it is an ESE Participating Member, may raise with the CARES Board of Directors, for Board decision, an ESE activity it believes is materially inconsistent with the terms of this Agreement or materially adverse to CARES' interests as a whole. The Board shall in good faith consider any such issue raised.

e. The ESE Executive Committee shall have delegated responsibility for all decisions regarding the Project not reserved to the CARES Board of Directors under this Agreement.

6. **Delegation by ESE Executive Committee.** The ESE Executive Committee may, at its discretion, delegate to a committee or committees, or to the Managing Director of CARES or his/her designee, some or all of the responsibilities vested in the Executive Committee pursuant to this Agreement as the Executive Committee determines to be lawful and appropriate.

7. **ESE Relationships with Other Parties.** ESE may admit new Participating Members and may establish contractual relationships with other parties to share product and service development and operations. ESE may also establish contractual relationships with other parties for the sale or distribution of ESE products and services.

8. **Pricing of ESE Project Entry Fees and Products and Services for CARES Members.**

a. CARES member utilities which are not initial Participating Members but which become Participating Members shall receive reasonably discounted Project entry fees compared to non-CARES members, as determined by the Executive Committee.

b. CARES member utilities which are not Participating Members shall receive reasonably discounted prices for ESE products and services at least until CARES' initial funding of \$125,000 is repaid to CARES, as determined by the Executive Committee.

c. Participating Members shall receive ESE products and services on such terms as are established by the Executive Committee, but in no event shall such terms be less favorable than the terms available to purchasers of ESE products and services which are not Participating Members.

9. **Technical Committee and Product Teams.** A technical committee comprised of appointees of the Participating Members may be established by the CARES Managing Director to provide analysis, review, and recommendations concerning the ESE. If established, such Technical Committee shall report to the CARES Managing Director, who shall have the authority to establish product teams for various products and services, comprised of CARES staff, appointees from Participating Members, and outside consultants, as deemed appropriate.

10. **ESE Accounting and Cost Allocations.**

a. ESE revenues, expenditures, assets, and liabilities shall be accounted for separately within CARES' overall accounting system according to generally accepted accounting principles and applicable legal requirements.

b. CARES shall establish the Project as a separate system of CARES. CARES hereby obligates and binds itself to set aside and pay out of the revenue of the Project, including amounts received from Participating Members under this Agreement, money sufficient to pay the costs of the Project as the same shall become due. Any costs of the Project shall not constitute a general obligation of CARES or any member of CARES or a charge upon CARES' general fund or upon any other money or property of CARES, including but not limited to the CARES Conservation Project and Wind Project, nor is the full faith and credit of CARES or any member of CARES pledged to the payment of Project costs, other than as provided in this Agreement.

c. The Project shall be charged with an appropriate share of CARES' administrative and general expenses as determined by generally accepted accounting principles and applicable legal requirements.

11. **Source of Participating Members' Payments.** The Participating Members shall not be required to make the payments to CARES under this Agreement except from the revenues derived from the ownership and operation of their electric utility properties. Each Participating Member agrees that it will establish, maintain, and collect rates and charges for power and energy and other services, facilities, and commodities sold, furnished, or supplied by it through its electric utility properties which shall be adequate to provide revenue sufficient to enable the Participating



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Benton County

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Member to make the payments to be made to CARES under this Agreement. The payments to be made to CARES under this Agreement shall be payable after payments of operating and maintenance expenses, principal of and interest on any obligations of a Participating Member, and required reserves for such obligations.

12. Information to CARES Board and CARES Members.

a. ESE shall provide periodic written and oral reports to the CARES Board of Directors containing sufficient information to determine whether ESE activities are consistent with the provisions of this Agreement.

b. ESE shall establish communication tools to ensure that CARES member utilities, whether or not they are ESE Participating Members, are kept reasonably apprised of ESE activities.

13. Involvement In All Products and Services. Funding provided by Participating Members may be used for the entire portfolio of ESE products and services. Participating Members agree to fund all products and services chosen for development by the Executive Committee.

14. Allocation of Risks and Benefits. Financial benefits and risks shall be allocated in proportion to Participating Member funding advances. Participating Members may take in-kind contribution credits against funding requirements for their outside professional service expenses directly attributable to ESE program development, if approved by the Executive Committee.

15. Repayment of Advances. The advances of Participating Members shall be repaid, with interest as provided by law, if ESE net revenues become available in the future that exceed adequate ESE reserves, as determined by the Executive Committee. Under the same circumstances, the \$125,000 initially funded by CARES, and subsequent CARES advances, if any, shall be repaid to the CARES general fund, with interest, at the same rate paid to the Participating Members. If funds become available, as provided in this Section 15, for repayment of some, but not all, advances made by Participating Members or CARES, then such funds shall be paid to the Parties which have advanced funds for the Project in proportion to the Parties' respective unreimbursed advances.

16. ESE Payment of Development Fee to CARES. To the extent ESE markets, as part of the ESE Project, a product or service that was developed in whole or in part through the use of CARES funds expended prior to the effective date of this Agreement, ESE shall pay CARES, out of the net revenues derived from the marketing of such product or service, a reasonable development fee in such amount as CARES and ESE in good faith agree upon with respect to the particular product or service.

17. Withdrawal from ESE. A Participating Member may withdraw from being a Participating Member in ESE on thirty days' written notice to the Parties. Except as determined by the Executive Committee, the withdrawing Participating Member shall receive no repayment of any of its ESE advances or interest thereon, and shall forfeit any and all rights or interest which it may have in the ESE or any of its assets, both at the time of withdrawal and in the future. Any individual contractual obligations incurred while a Participating Member, including the obligation to provide the initial funding provided in Section 2, shall remain in full force and effect.

18. Termination of ESE and this Agreement. The CARES Board of Directors shall terminate the ESE and this Agreement on 45 days' written notice to the Parties, provided that such termination shall only be upon the recommendation of the Executive Committee. The Parties contemplate that at the end of the first year of initial ESE funding, the Executive Committee will make a determination regarding whether the ESE and this Agreement should continue and, if that determination is negative, transmit that recommendation promptly to the CARES Board of Directors for action terminating the Project and this Agreement. No individual Participating Member shall have the authority to terminate the ESE or this Agreement or to unilaterally discontinue payment of its funding obligation.

19. Dispute Resolution

a. The parties shall execute their rights and discharge their duties as set forth in this Agreement in good faith with the objective of acting to achieve the efficient and cost effective operation of the Project. The Parties shall attempt to resolve any disputes arising from the terms of this Agreement.



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Klickitat Co.



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Benton County

b. In the event of a dispute, the parties to the dispute shall each appoint a designee who shall, by consultation, exercise reasonable efforts to arrive at an amicable resolution of the dispute.

20. **Assignment.** The Parties agree that they shall not assign their interests or obligations under this Agreement without the prior written consent of the other Parties. This Agreement shall inure to the benefit of and shall be binding upon the respective assigns.

21. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior agreements with respect to the subject matter of this Agreement.

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

23. **No Unspecified Third Party Beneficiaries.** There are no unspecified third party beneficiaries of this Agreement. Except as provided in this Agreement with respect to the rights of CARES member utilities which are not ESE Participating Members, nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns, and legal representatives.

24. **Waiver.** Except as otherwise provided in this Agreement, or as agreed by the Parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Any Party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Agreement.

25. **Headings.** The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions of this Agreement.

26. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the law of the State of Washington.

27. **Venue: Jurisdiction.** The Parties consent to the personal jurisdiction of the courts of the State of Washington with respect to any lawsuit to interpret or enforce this Agreement. The venue of any such lawsuit shall be King County, Washington unless otherwise agreed by the Parties.

28. **Attorneys' Fees.** In the event any Party to this Agreement finds it necessary to bring any suit, action, or other proceeding at law or in equity to interpret, enforce, or implement any of the terms, covenants, or conditions of this Agreement, the Party prevailing in such action or proceeding shall be paid all of its reasonable attorneys' fees and costs by the losing Party or Parties. If there is no prevailing party, the Parties to the dispute shall each bear their own attorneys' fees and costs.

29. **Severability.** If any term, covenant, or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

30. **Signature Clause.** Each Party to this Agreement represents that it has the authority to execute this Agreement and that it has been duly authorized to enter into this Agreement.

31. **Counterparts.** This Agreement may be executed in one or more counterparts, and each shall be considered an original when the signatures of each parties have been obtained.

DATED this 28th day of August, 1997.

CONSERVATION AND RENEWABLE ENERGY
SYSTEM

By: M. BURNETT

Its: MANAGING

DIRECTOR
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FRANKLIN COUNTY PU AGREE

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BENTON COUNTY PUD

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Benton County

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON
COUNTY

By: Sam W Smith

Its: Manager

PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS
HARBOR COUNTY

By: _____

Its: _____

PUBLIC UTILITY DISTRICT NO. 1 OF
KLICKITAT COUNTY

By: _____

Its: _____

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FRANKLIN COUNTY PU

AGREE

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Klickitat Co.



1998-013357
Page: 8 of 9
05/14/1998 10:32A
16.00 Benton County

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON
COUNTY

By: _____

Its: _____

PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS
HARBOR COUNTY

By: Shomys

Its: General Manager

PUBLIC UTILITY DISTRICT NO. 1 OF
KLICKITAT COUNTY

By: _____

Its: _____

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FRANKLIN COUNTY PU

AGREE

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Klickitat Co.



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Page: 9 of 9
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Benton County

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON
COUNTY

By: _____

Its: _____

PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS
HARBOR COUNTY

By: _____

Its: _____

PUBLIC UTILITY DISTRICT NO. 1 OF
CLICKITAT COUNTY

By: [Signature]

Its: C. E. ROBERTS

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Franklin Co, WA

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