

RESOLUTION 2018-BB

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
APPROVING A MASTER SERVICES AGREEMENT WITH
CLEARRESULT TO IMPLEMENT BPA-FUNDED ENERGY
EFFICIENCY KIT ASSEMBLY AND DELIVERY SERVICES**

WHEREAS, the Bonneville Power Administration has provided the Town with funds to implement energy efficiency improvements for the Town's electric utility customers; and

WHEREAS, the Town has determined to use a portion of the funds to provide energy efficiency kits to residential electric customers; and

WHEREAS, an online website hosted by CLEAResult will serve as a portal for citizens to access and request kits; and

WHEREAS, CLEAResult will invoice the Town of Eatonville for kits and the Town will submit and receive reimbursement from Bonneville Power Association; and

WHEREAS, the total budget for energy efficiency kits shall not exceed \$10,000.00 now, therefore;

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Master Services Agreement with CLEAResult to implement a BPA-funded program, to provide energy efficiency kits to Town of Eatonville electric customers, is approved in the form attached hereto.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 24th day of September 2018.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "**Agreement**") dated effective September 10, 2018 (the "**Effective Date**"), is between CLEAResult Consulting Inc., a Texas corporation and/or an affiliate thereof ("**CLEAResult**"), and the Town of Eatonville, a municipality in Washington state ("**Utility**").

BACKGROUND

- A. CLEAResult helps utilities, businesses and individuals make the wise use of energy a way of life.
- B. Utility provides electric service to its customers.

C. Utility and CLEAResult contemplate that CLEAResult will provide its services (the "**Services**") to Utility under one or more Statements of Work (as defined below) in the format attached to this Agreement and incorporated as Exhibit A. The purpose of this Agreement is to set forth the terms and conditions that will govern each of those Statements of Work.

AGREEMENT

The parties incorporate into this Agreement the above Background provisions and agree as follows:

1. Scope.

a. This Agreement sets forth the terms that apply to each Statement of Work ("**SOW**") issued to CLEAResult for Services. Each SOW is subject to the terms and conditions of this Agreement. In the event of any conflict or inconsistency between the terms or conditions of this Agreement and any provision in an SOW, this Agreement shall control unless such term or condition is explicitly superseded in the applicable SOW. CLEAResult will not become obligated in any way to Utility until Utility places an SOW with CLEAResult and CLEAResult executes and returns that SOW to Utility.

b. The parties may add additional SOWs to be governed by the terms and conditions of this Agreement at any time by mutually executing an SOW. Each additional SOW will be numbered sequentially (i.e., SOW No. 1, SOW No. 2, and so on) and be substantially in the same format set forth in Exhibit A.

2. Term and Termination.

a. The term of this Agreement ("**Term**") is from the Effective Date and remains in effect until terminated pursuant to this Section 2.

b. Either party may terminate this Agreement by providing forty-five (45) days' written notice, with or without cause, at any time before its expiration following written notice of deficiency to the other party and a reasonable period to cure.

c. CLEAResult shall be entitled to receive accrued but unpaid compensation and reimbursement as of the date of termination for authorized services actually and properly performed as of the termination date.

d. The provisions of Sections 2 and 4 through 9 shall survive termination of this Agreement.

3. Payment. Utility agrees to compensate CLEAResult (in United States currency) as described in the applicable SOW. If not otherwise specified in the SOW, CLEAResult shall invoice Utility, and Utility shall make payment to CLEAResult within thirty (30) days of receipt of that invoice.

4. Independent Contractor Relationship. This Agreement shall not create the relationship of employer and employee, a partnership, or a joint venture. Each party shall be solely liable for the wages, fringe benefits, payroll taxes, work schedules and work conditions of any assistants, partners or employees that that party may engage.

CLEAResult may contract with one or more qualified subcontractors to perform a portion of the work specified in any applicable SOW.

5. Conflicts of Interest; Nonsolicitation.

a. During the Term of this Agreement, CLEAResult is free (subject to Section 5(c)) to perform services for other businesses or persons so long as such other work does not interfere with CLEAResult's ability to perform the Services or the actual performance of the Services.

b. The parties agree that during the Term of this Agreement and for a period of one (1) year thereafter (the "**Restriction Period**") neither party nor any of its officers, directors, owners, employees, or agents will suggest to a business relation of the other party that such business relation should reduce or terminate the business relation's business or relationship with the other party or attempt to compete with the other party for business engagements. During the Restriction Period, for itself or on behalf of another, neither party nor any of its officers, directors, owners, employees, or agents will, without the consent of the other party (which may be withheld or conditioned in the other party's absolute discretion), solicit any employee of the other party to become an employee or independent contractor of any other person or entity, suggest to an employee of the other party that the employee should reduce or terminate the employee's relationship with the other party, or hire as an employee or engage as an independent contractor any person who was an employee of the other party at any time during the Restriction Period; provided that the restrictions in this section shall not apply to any employee who solicits employment directly on such employee's own initiative or any employee who responds to a general solicitation of employees not specific or targeted to employees of CLEAResult.

c. The parties acknowledge and agree that each restriction contained in this Section 5 (each, a "**Restriction**") is reasonable in scope and time and that the Restrictions afford a fair protection to the interests of the other party.

6. Intellectual Property.

a. Both parties shall retain all rights to any pre-existing intellectual property. Each party grants to the other party a nonexclusive, worldwide, royalty-free license (with rights to sublicense to others) in such pre-existing intellectual property to translate, reproduce, distribute, and prepare derivative works, to publicly perform and to publicly display all any pre-existing intellectual property that is provided to the other party for the purpose of meeting its obligations under this Agreement for the Term of this Agreement.

b. If CLEAResult is required to create any invention, discovery, work of authorship, trade secret, report, or other tangible or intangible item for delivery to Utility as a part of the Services ("**Work Product**"), all such Work Product created under this Agreement shall be the exclusive property of Utility. Utility and CLEAResult agree that such original works of authorship are "works made for hire" of which Utility is the author within the meaning of the United States Copyright Act.

7. Confidentiality.

a. Neither party will use any Confidential Information of the other party for any purpose other than as needed to perform its obligations under this Agreement. Each party will hold all Confidential Information of the other party in strict confidence and will not disclose any Confidential Information to any person other than to its employees and independent contractors who: (i) have a "need to know;" (ii) have been advised of the confidential and proprietary nature of the Confidential Information; and (iii) have signed a written agreement that is as protective of the Confidential Information as that set forth in this Section; except as compelled by court order or otherwise required by law, including but not limited to the Public Records Act, Chapter 42.56 RCW. If either party is required by law to disclose Confidential Information, that party will immediately notify the other party and cooperate with the other party to obtain a protective order or other appropriate remedy to maintain the confidentiality of the information. Notwithstanding any provision to the contrary in this Agreement, CLEAResult may store, access and transmit Confidential Information within CLEAResult wherever located.

b. The term "**Confidential Information**" means all information and materials relating to either party's business, in whatever form or medium, disclosed to or received by the other party, whether visually, by perception, orally or in writing, whether disclosed before or after the Effective Date, and whether or not specifically marked or otherwise identified as "Confidential" or "Proprietary," including all summaries and notes prepared by or on behalf

of either party, except that "Confidential Information" does not include any information that the receiving party demonstrates: (i) has become generally available to the public without breach of this Agreement; (ii) was later received by that party from another person who did not violate any duty of confidentiality; (iii) is de-identified information aggregated with data from other sources; or (iv) was developed by that party without use of any Confidential Information by persons who were not exposed to the Confidential Information.

8. Indemnity; Limitation on Damages. To the fullest extent permitted by law, the parties shall indemnify, defend, reimburse, and hold harmless each other and their successors, respective directors, officers, members, employees, representatives, and agents from, for, and against any and all allegations, claims, liens, liabilities, losses, demands, damages, expenses, suits, actions, proceedings, judgments, and costs of any kind whatsoever, whether actual or merely alleged and whether directly incurred or from a third party, including, without limitation, settlement costs, court costs, and attorneys' and expert witness fees and expenses, arising out of, or relating to: (a) negligence or willful misconduct by the indemnifying party or any of its officers, employees, agents, representatives, subcontractors, or affiliates; or (b) breach of this Agreement by the indemnifying party or any of its officers, employees, agents, representatives, subcontractors, or affiliates. NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT. LIABILITY OF CLEARResult UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT CLEARResult RECEIVES IN EXCHANGE FOR SERVICES AND REIMBURSABLE EXPENSES UNDER THIS AGREEMENT. LIABILITY OF UTILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT UTILITY IS OBLIGATED TO PAY IN EXCHANGE FOR SERVICES AND REIMBURSABLE EXPENSES UNDER THIS AGREEMENT.

9. Miscellaneous.

a. Applicable Law; Arbitration; Remedies.

i. This Agreement shall be governed by and construed under the laws of the State of Washington, without regard to conflict of law rules.

ii. Any dispute or claim that relates to this Agreement, its interpretation or breach, or to the existence, scope, or validity of this Agreement or this arbitration provision, shall be resolved by arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment upon the award rendered pursuant to such arbitration may be entered in any court with jurisdiction. The parties acknowledge that mediation helps parties settle their disputes and any party may propose mediation whenever appropriate through the American Arbitration Association or any mediator selected by the parties. Any dispute or claim for which a party seeks injunctive relief, even if contrary to the language of this section, may be brought in the state and federal courts in King County, Washington, and such courts shall be the proper and exclusive forum for any such action.

iii. Utility acknowledges that in the event of a breach of Sections 4 through 8, the damage to CLEARResult would be irreparable and extremely difficult to estimate, making any remedy at law or in damages inadequate. Thus, in addition to any other right or remedy available to it, CLEARResult shall be entitled to an injunction restraining such breach or threatened breach and to specific performance of any provision of Sections 4 through 8, and in case bond or other security shall be required, it shall be limited to the amount CLEARResult receives in exchange for Services under this Agreement.

b. Attorney's Fees. In the event an action is brought to enforce any provision of or declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal costs including attorney fees the prevailing party incurs, including, but not limited to, those related to or arising from any appeal.

c. Notices. Except as otherwise provided in the Agreement, all notices or other communications under this Agreement must be in writing and delivered to the addresses below the signatures to this Agreement. Notices will be deemed accepted three (3) business days after the date of mailing. Addresses may be changed by notice given by such party to the other pursuant to this section or by other form of notice agreed to by the parties.

d. Assignment. Neither party shall assign this Agreement, except to an affiliate, without the prior written permission by the other party.

e. Entire Agreement; Counterparts. This Agreement, including the Background sections and any exhibits, schedules or attachments (all of which are incorporated into this Agreement by this reference), contains the entire agreement of the parties regarding the subject matter described in this Agreement, and all other promises, representations, understandings, arrangements and prior agreements related thereto are merged in this Agreement and superseded by this Agreement. The provisions of this Agreement may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought. This Agreement may be executed in two (2) or more counterparts, all of which will constitute but one and the same instrument.

f. Severability. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions in this Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

g. Waiver of Breach. The failure of either party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the party under this Agreement, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance.

h. Opportunity for Counsel Review. The parties expressly acknowledge that each has read the terms of this Agreement and that each party has had the opportunity to discuss the terms of this Agreement with independent legal counsel.

i. Force Majeure. Neither party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, or other catastrophic event beyond the reasonable control of the affected party, provided the affected party immediately notifies the other party and takes reasonable and expedient action to resume operations.

j. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or liabilities upon any person that is not a party to this Agreement, except as expressly provided in this Agreement.

The parties to this Agreement have executed this Agreement as of the Effective Date.

CLEAResult

Utility

CLEAResult Consulting Inc.

Town of Eatonville

By: _____

By: _____

Name: Trent Brackenridge

Name: _____

Title: Vice President

Title: _____

Notice Address:

Notice Address:

Attn: Legal Department
100 SW Main St, Suite 1500
Portland, OR 97204
Email: legal@clearresult.com
Phone: 503-248-4636

Attn:
201 Center West Street
PO Box 309
Eatonville, WA, 98328
Phone: (360-832-3361)
EIN: _____

EXHIBIT A STATEMENT OF WORK NO. 1 UNDER MASTER SERVICES AGREEMENT

1. Background and General Scope. As required in the Agreement, this SOW defines the Services. The parties intend for CLEARresult to provide energy efficiency kit assembly and delivery services. Capitalized terms not defined in this SOW are as defined in the Agreement.

2. Tasks. CLEARresult will provide the following Services:

a. Kit and Shipping. Contractor shall distribute kits containing the energy efficient products listed in Attachment A ("Kits") to customers in Utility's territory ("Customers"). Utility will provide Customer names and mailing addresses to CLEARresult's third-party provider, Techniart, Inc. ("Contractor"). Contractor shall ship Kits within twenty-one (21) calendar days of receiving Customer information from Utility. Kits shall include a Utility information brochure and a Utility branded box label or sticker. Utility or CLEARresult may provide the brochure and label or sticker to Contractor. Contractor shall mail Kits in a sturdy, damage-resistant box with protective packing materials.

b. Online Portal. An online website hosted by Contractor will serve as a portal for Customer to access and request Kits. To associate a Kit request to Utility, Customer will select Utility from a dropdown list and then input their zip code. The portal will confirm that the Customer's zip code matches a zip code serviced by Utility, then load Utility-branded page upon confirmation. Utility's webpage will display Utility's name and logo at the top and provide information on the Kit configuration(s) and products available to Customer.

c. Reporting. CLEARresult shall provide Utility with a monthly report of Kits shipped to Utility Customers. The report shall include number of Kits shipped, and will include invoices for all purchased products and for bulk purchase of products included in the Kit.

d. Marketing Services. CLEARresult will design and produce marketing materials for Utility to promote the Kit offering to Customers. CLEARresult will collaborate with Utility on branding needs and requirements. Marketing materials will include social media placement, Utility news feeds, which will be made available to Utility by CLEARresult to utilize along with a website portal to allow Utility to offer Kits directly to Customers.

3. Schedule. The Services described herein shall commence upon the date this SOW is signed by CLEARresult, and shall terminate on January 31, 2019, unless terminated by either party sooner pursuant to the terms of this Agreement.

4. Payments. The total budget for Services under this SOW shall not exceed \$~~10,000~~ without prior written approval from Utility. Payments shall be made per Kit. Kit price listed in Attachment A shall remain fixed for the term of the Agreement, unless otherwise amended by both parties in a signed writing.

5. Invoices. Contractor shall provide Utility with monthly detailed reporting that indicates products shipped, BPA measure code per product each month, kWh savings, and Kit tracking information with each invoice. All invoices shall be submitted to Utility by August 30, 2019.

6. Change Procedure. The Agreement, including any exhibits, schedules or attachments including this SOW, contains the entire agreement of the parties regarding the subject matter described in it. In the event of any conflict between the terms and conditions of the Agreement and this SOW, the applicable term or condition of the Agreement supersedes the conflicting term or condition in this SOW, unless the parties clearly express in writing that the SOW includes a change to the Agreement. The provisions of this SOW may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought.

Attachment A:

Product configurations and pricing guidelines.

Kit #1 - (8 LED A19)

Products	Model	(C) Qty and utility Cost
60W LED A19	LA19927DEFV2	8
Plain Box w/Sticker		1
Shipping		\$7.00
Total Cost		\$30.00

Kit #2 - (4 LED A19 & 1 APS)

Products	Model	(C) Qty and utility Cost
60W LED A19	LA19927DEFV2	4
Tier 2 APS (4 plug)	TS1814	1
Plain Box w/Sticker		1
Shipping		\$7.00
Total Cost		\$60.00

Kit #3 - (8 LED A19, 1-TVS Showerhead & APS)

Products	Model	(C) Qty and utility Cost
60W LED A19	LA19927DEFV2	8
Tier 2 4-plug APS	TS1814	1
Evolve Showerhead w/TSV	EV3011-CP150-SB	1
Plain Box w/Sticker		1
Shipping		\$7.00
Total Cost		\$85.00