

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
ENERGY NORTHWEST AND
Eugene Water & Electric Board
TO PROVIDE SERVICES AS REQUESTED**

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RECITAL

This Intergovernmental Agreement (hereinafter referred to as the “Agreement”) is by and between the Eugene Water & Electric Board, a municipal utility in the State of Oregon and political subdivision of the City of Eugene, with its principal offices at 4200 Roosevelt Blvd, Eugene OR,97440, (hereinafter “EWEB”), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington, with its principal office at P.O. Box 968 Richland, WA 99352, by and through its Business Development Fund (hereinafter “EN”), as the parties (each, a “Party,” and collectively, the “Parties”) to the Agreement. This Agreement is authorized pursuant to the Interlocal Cooperation Act (Act), Chapter 39.34.030 Revised Code of Washington (RCW), whereupon “public agencies” as defined by the Act, inclusive of EN and EWEB, may engage in joint and cooperative undertakings.

WHEREAS, EN is authorized, under Revised Code of Washington (RCW) Chapters 43.52.300(2), to maintain, operation, and regulate plants, works, and facilities for the generation and/or transmission of electric energy, which are “Services” sought by EWEB for the “Project” as hereinafter defined in this Agreement; and

WHEREAS, EWEB finds that EN is willing to perform certain Services on the Project hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, EN is willing to perform the Services, all relevant factors considered.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the Parties hereto agree as follows:

1. DEFINITIONS

- 1.1 “Additional Services” is defined in Section 2.2.
- 1.2 “Agreement” means this Intergovernmental Agreement between EN and EWEB including all Exhibits referenced herein which are hereby incorporated by reference, and as the same may be modified, amended, supplemented or replaced from time to time in accordance with the provisions hereof.
- 1.3 “Applicable Law(s)” “means all applicable and obligatory laws, statutes, ordinances, codes, judgments, decrees, injunctions, writs, orders, permits, approvals, standards, rules, regulations and interpretations (as may be amended, modified or repealed from time to time) of, or by, any Governmental Authority having jurisdiction over the Project under this Agreement.
- 1.4 “Applicable Permits” means any federal, state, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, waiver, permit or other approval listed in Exhibit F.
- 1.5 “Applicable Project Documents” means reference materials set forth in Exhibit E.
- 1.6 “Business Development Fund” means the EN account entitled as such as of the date of the Effective Date of this Agreement.
- 1.7 “Capital Improvement” means any work intended to boost an asset’s condition beyond its original or current state. A Capital Improvement increases an asset’s useful function or service capacity, extends its useful life, reduces future operating costs, or upgrades essential parts of the asset.

- 1.8 “Capital Improvement Plan” or “CIP” means a planned schedule and budget for performing work over both the short term (5 years) and a longer timeframe deemed consistent with industry maintenance standards (in relationship to current Project conditions) and budgetary restrictions.
- 1.9 “Change Request” shall have the meaning given in Section 5.2.
- 1.10 “EWEB Representative” means one or more persons designated in Exhibit I (as may be revised from time to time) by EWEB as the primary point of contact for EN in its performance of this Agreement.
- 1.11 “Dam” shall mean the Stone Creek Diversion Weir, owned and operated by EWEB including all ancillary or supporting structures, piping, valves and other equipment
- 1.12 “Effective Date” has the meaning given in Section 11.1.
- 1.13 “EN Personnel” has the meaning given in Section 3.12.
- 1.14 “Emergent Event” means an event requiring immediate action to prevent or mitigate harm to human life, property, or the environment.
- 1.15 “Excluded Work” is defined in Section 2.6.
- 1.16 “Calendar Year” means the period commencing the “Effective Date” of this Agreement and ending twelve (12) midnight on the following December 31st. Thereafter “Calendar Year” means the twelve (12) month period commencing each year at 12:01 a.m. on January 1, and concluding at twelve (12) midnight the following December 31st, except that the last Calendar Year shall end on the date of termination of this Agreement.
- 1.17 “Governmental Authority” means any federal, state or local government body having jurisdiction over the Project.
- 1.18 “Hazardous Materials” means any material that by reason of its composition or characteristics is hazardous material, including hazardous or toxic substances, hazardous waste, petroleum products (including crude oil or any fraction thereof), or has hazardous constituents, defined or regulated as such in or under Applicable Laws or regulations, relating to or imposing liability or standards of conduct concerning the protection of human health or the environment.
- 1.19 “Incidental Costs” means costs incidental but separate from costs to Operating the Project, including fees for utilities, licenses, permits, consumable supplies, etc., but excluding costs of Capital Improvements.
- 1.20 “Monthly Operating Report” means a written summary of: (1) all tasks engaged in or executed during the month at the Project including a brief description, completion or projected completion status, any additional work required to complete the task, and effectiveness of the task; (2) the general status of all parts ordered or received during the month; (3) a detailed summary of any Project outage that occurred during the month, including all actions taken or coordinated to restore the Project to service, the specific timeframe during which the Project was mechanically unavailable to produce power, and noticeable trends or correlational observations in relation to the cause of the outage.
- 1.21 “Operate the Project” is defined in Section 2.1.
- 1.22 “Operational Breach” shall have the meaning given in Section 11.2.
- 1.23 “Repair and Maintain” means both routine and preventative maintenance performed to restore the Project’s physical condition and/or operation to a specified standard, prevent further

deterioration, replace or substitute a component at the end of its useful life, serve as an immediate but temporary repair, or assess ongoing maintenance requirements.

- 1.24 “Pre-existing Conditions” shall have the meaning given in Section 9 and Exhibit D.
- 1.25 “Project” means, and is limited to, Stone Creek Powerhouse, Diversion Dam, and Transmission Line up to the High Side of the Lake Harriet transformer. Only those items specified for Services within the Project Site and expressly excludes, any other facilities, buildings or property unless expressly provided in this Agreement.
- 1.26 “Project Costs” means all costs expended on the Project under this Agreement including, but not limited to, sums payable to EN for Services and sums payable to 3rd parties.
- 1.27 “Project Site” means, and is limited to, the area depicted in Exhibit G.
- 1.28 “Prudent Utility Practice” means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.
- 1.29 “Services” means work as allowed under this Agreement and approved by a fully executed Work Release Order(s).
- 1.30 “Term” means the period of time given in Section 11.1.
- 1.31 “Unsafe Condition” means a condition at the Project Site or affecting the Project Site that would appear to a reasonable plant operator to unreasonably compromise safety of persons at the Site or unreasonably endanger the Project or other property located at the Project Site.
- 1.32 “Work Release Order” or “WRO” means the form or document used to authorize Services, amend Services or add Additional Services associated to a WRO. A WRO shall include the scope, schedule (including any operational outage or curtailment periods), budget and outside contractor’s estimate (where applicable), for the Services or Additional Services to be completed, and shall reference the source of funding in the authorized annual budget. WRO shall also include the payment terms for the Services or Additional Services authorized within the WRO.
- 1.33 “Operating Committee” means designated EN and EWEB Representatives. Although the day-to-day operation shall be managed and operated by EN, the Operating Committee shall meet in person every 6 months to review procedures and make recommendations for the operation and maintenance or modification of the Project. Members of the committee shall be designated by the parties in writing and the meetings shall be held every 6 months at the site. EN shall record meeting minutes and action items and distribute to EWEB within 5 days of Operating Committee meetings.

2. SERVICES TO BE PROVIDED BY ENERGY NORTHWEST

- 2.1. **Project Operation.** EN shall operate and maintain the Project (referred to as “Operate the Project”) identified and referred to in Exhibit K, Project Drawings on EWEB’s behalf as follows:
- 2.1.1 “Operate the Project” means do all things (directly or with contracted services) required to ensure the safe and reliable operation of the Project, in accordance with requirements and limitations set forth herein, subject to Applicable Laws including but not limited to the Clean Water Act, Applicable Permits, Prudent Utility Practices and, when EN

Operates the Project with contracted services, in compliance with applicable procurement requirements, inclusive of activities typically undertaken to Repair and Maintain a hydroelectric project similar to this Project and as otherwise set forth in the WRO.

- 2.1.2 Provide Services or Additional Services without knowing or intentional violation of the Applicable Permits as fully identified by EWEB in Exhibit F.
- 2.1.3 Utilize Prudent Utility Practices and the “Applicable Projects Documents” as a guide, to provide only the Services described on Exhibit A-1, or as may be requested by EWEB for each Calendar Year of the duration of this Agreement, and/or via written order of EWEB, as budget and schedule allow, subject to the terms and conditions of this Agreement.
- 2.1.4 Provide Services without conflict to or interfere with work conducted by employees of EWEB related to the Project. EWEB Representative shall: (a) be responsible for supplying EN at least two (2) calendar days in advance, except in response to an “emergent event,” with all relevant information including but not limited to copies of relevant agreements, policies and procedures, associated with the work to be conducted by employees of EWEB on the Project, or any other ancillary or related structures, piping, valves and other equipment, any other facilities, buildings or property that may or does affect the operations or maintenance of the Project, subject to all confidentiality provisions of such documents.
- 2.1.5 EWEB will have remote control of the operations over the Dam for monitoring and power changes. Energy Northwest will take local control of the facility when directed by EWEB. This includes both the powerhouse and Dam.
- 2.2. Additional Services. Upon prior approval of EWEB’s approving authority, EN may provide Additional Services to EWEB including Capital Improvements. EN’s Additional Services shall be priced in accordance with rates and terms in the WRO for the identified services.
- 2.3. Annual Budget and Annual Maintenance Schedule. EN’s scope of work in Section 2.1 includes:
 - 2.3.1. Annual Budget. EN shall prepare and submit an Annual Budget in July of each year or as agreeable to EWEB, covering the following Calendar Year (January 1st through December 31st) during the Term. The annual budget shall include an estimate of all Project costs inclusive of all costs necessary to operate the Project, incidental costs, and the cost of all Capital Improvements scheduled for the Calendar Year, whether performed as additional work or contracted to a third party.
 - 2.3.2. Annual Maintenance Schedule. EN shall prepare and submit to the EWEB an Annual Maintenance Schedule by August 15th of each year, covering the following Calendar Year (January 1st through December 31st) during the term of this Agreement. The Annual Maintenance Schedule shall include an estimate of all Project timelines for the coming year with a specific emphasis on the dates which require generator outages. Consistent with Prudent Utility Practice, EN shall attempt to schedule generator outages during periods of low flow or otherwise in deference to the scheduling wishes of EWEB. The Annual Maintenance Schedule shall be consistent with the Annual Budget.
 - 2.3.3. Total Amount of Agreement. The total not to exceed amount for the Term of the Agreement is \$2,000,000.
- 2.4. Work Release Orders. Except as otherwise provided herein, EWEB will use WROs to authorize all EN Services. Concurrent with the execution of this Agreement, EWEB will execute (and EN shall acknowledge) WRO(s) in the form substantially in accordance with the attached Exhibit A-

1. Future EN work authorizations will occur through additional WROs. EWEB's and EN's authorized representatives shall approve and sign all WRO's associated with this Agreement.
- 2.5. Unauthorized Services; Emergent Events. In the event EN provides Services that are required by Prudent Utility Practice (e.g. to prevent an Emergent Event) but are not part of Operating the Project, EN shall perform such Services and, if performing such Services materially increases EN's costs to provide Services, shall invoice EWEB for EN's additional costs, in accordance with Exhibit C, invoice shall include a justification for the incurred costs; provided, that EN shall promptly notify EWEB prior to incurring such costs so that EWEB shall have the ability to explore alternatives that will not cause EN to incur additional costs.
- 2.6. Excluded Work. For the avoidance of doubt, the following areas and tasks are not within the scope of EN's authority or responsibility under this Agreement:
 - 2.6.1. Operation and maintenance of the 115kV overhead transmission line and its ancillary and supporting structures thereto.
 - 2.6.2. Costs arising from contracts between EWEB and a professional engineer, consultant, or other contractor providing service to EWEB in connection with the Project;
 - 2.6.3. Costs for materials procured by EWEB to be applied or consumed at the Project (except as otherwise included in Exhibit A-1);
 - 2.6.4. Identification or abatement of asbestos or lead paint conditions, if any;
 - 2.6.5. Creating or incurring any liability or obligation on behalf of EWEB except as expressly authorized by EWEB or as expressly set forth herein;
 - 2.6.6. Settling, compromising, assigning, releasing or transferring any claim, suit or demand, whether brought by or against EWEB or otherwise involving the Project; or
 - 2.6.7. Taking any action on behalf of the Project that would result in a pledge, mortgage, license, conveyance or other transfer or disposition of any property or assets of the Project except for actions in the ordinary course of business;
 - 2.6.8. Capital Improvements, unless specifically requested by EWEB and approved by both Parties by a fully executed WRO.
 - 2.6.9. Energy Northwest shall not be responsible for the structural integrity or any Engineering analysis of the Transmission system, Powerhouse, Penstock or the Dam systems, structures or components.

3. TERMS AND CONDITIONS OF EN's SERVICES

- 3.1. Cost Estimates in Annual Budget. When preparing the Annual Budget, EN shall utilize the best available information including historic costs, if available. If EWEB and EN identify a Capital Improvement need, EN shall utilize cost estimates in the Capital Improvement Plan, if one exists, updated for inflation and other factors if warranted.
- 3.2. Procurement Procedures. EN shall comply with all applicable state and federal laws in the procurement of goods or services or professional services.
- 3.3. Emergency Notification. EN shall provide EWEB with 24/7 contact information such that a designated EWEB Representative can reach EN if needed at all times.

- 3.4. EN and EWEB Coordination. EN shall not unreasonably interfere with activity conducted by EWEB related to the Project. EN shall provide EWEB reasonable notice, including by electronic mail, of any plans to limit access within the Project Site or undertake activities that may affect normal operation of the Project.
- 3.5. Applicable Project Documents. EN shall familiarize itself with Applicable Project Documents so as to improve its working knowledge of the Project and to avoid unnecessary loss of Project knowledge or re-creation of existing information.
- 3.6. EWEB Security Standards. EN's employees, agents, and subcontractors shall obtain security clearance prior to working at the Project Site and shall comply with EWEB security standards, available from the EWEB Representative.
- 3.7. Non-Hazardous Waste Management. EN shall be responsible for supervising the Project Site solid waste management collection and disposal.
- 3.8. Security. To prevent theft and vandalism at and within the Project Site EN shall utilize physical security measures accessible to EN and EWEB at the Project Site including the securing of locks, doors, and gates when at the Project Site.
- 3.9. Emergency Action Plans. EN's employees, agents, and subcontractors shall be familiar and comply with EWEB's Emergency Notification Plan, Public Safety Plan and the Oil Spill Prevention and Countermeasures Plan (OSPCC), as such plans may be created or modified from time to time. EWEB will provide copies of new and revised plans as they become available.
- 3.10. Emergency Call-out. EN shall ensure that a qualified person reports to the Project Site within 2 hours of being notified by EWEB or local law enforcement of a condition requiring immediate attention.
- 3.11. EN Personnel. EN shall provide and make available, as necessary, all such labor, supervisory and managerial personnel as required to perform the Services (the "EN Personnel"). Such EN Personnel shall be qualified (including possessing appropriate licensures and/or certifications), experienced and trained in the duties to which they are assigned. EN shall retain sole authority, control and responsibility with respect to labor matters in connection with the performance of the Services. If EWEB reasonably deems any EN Personnel as under-qualified, disruptive or non-cooperative, EWEB may, by prior written notice, require the removal of such EN Personnel and the replacement of such EN Personnel with a different employee meeting the requirements of this Agreement. In addition, EN shall also consult and confer with EWEB and reasonably cooperate to address any concerns raised by EWEB with respect to any EN Personnel performing Services under this Agreement. If any person employed by EN appears to EWEB to be incompetent or to act in a disorderly or improper manner or who fails to perform the Services in accordance with the terms and conditions of this Agreement, then upon written notice of EWEB, EN shall promptly replace, but in any event not later than five (5) days after such written notice, such person at the Project and such person shall not again be allowed to perform any of the Services at the Project. EN shall be allowed to use qualified, competent subcontractors to perform Services under the supervision of EN Personnel; provided, that EN shall deliver prior written notice to EWEB of such subcontractors and such notice shall include the identity of the subcontractors; the services to be rendered by such subcontractors; the dates during which such services are to be rendered; and a statement that the subcontractor's insurance meets the same insurance requirements as EN, set forth in Exhibit B, and that the subcontractor named EWEB as an additional insured. Pursuant to Section 10 of this Agreement, EN is responsible for actions taken by its subcontractors used to perform Services hereunder.
- 3.12. Communications With Agencies. Operating the Project requires periodic communication with various city, state, and federal agencies, including without limitation the Federal Energy Regulatory

Commission, the United States Forest Service, the Department of Fish and Wildlife, the Water Resources Department, and any insurance carrier that issued a policy related to the Project. EWEB and EN will attempt to coordinate all communications with these agencies under EWEB's direction. EN shall participate in meetings with these agencies when requested and generally is encouraged to attend when its work schedule allows. EN may contact agencies without prior EWEB approval pursuant to any established protocol or as otherwise reasonably necessary due to an Emergent Event or other matter if Prudent Utility Practices so requires and the information to be communicated involves imminent danger arising from a significant safety problem; provided that the communication means is not otherwise covered by the "EWEB Emergency Notification Plan" if the provisions of the Plan are being followed as to the particular situation; and further provided that EN has made reasonable efforts to contact EWEB and have EWEB provide the communication and either EN has been unable to contact appropriate EWEB personnel or EWEB has failed to provide the communication. EWEB may require that it be present at and be provided with copies of all communications with EN with these agencies except as to any oral imminent danger communications referred to above. Upon request by EN, EWEB shall provide EN with copies of all written communications between EWEB and these agencies.

3.13. Recordkeeping and Public Records Requests for EN and EWEB. This Section 3.14 applies equally to EN and EWEB in order to provide a consistent plan for recordkeeping and the handling of public records requests (PRR) in Washington that is both consistent with the public records law in the state in which the PRR is made and to provide each Party the maximum amount of control over what is released, as dictated by the state law in which the PRR is made.

3.13.1. Recordkeeping. Each Party shall create and maintain complete and accurate records of all activities the Party is responsible for under the Agreement. EN shall keep its records at the Project with digital copies available upon request by EWEB, in a format acceptable to EWEB.

3.13.2. Public Records Requests. Each Party shall be responsible for the processing of PRRs directed to it, and for all costs, fees and penalties associated with the processing of such or errors thereto.

(a) PRRs. PRRs made will always be referred to the Party holding the record being sought.

(b) Washington PRRs.

3.13.2.b.a.1. Releasability. EN may only release records specifically prepared, used or retained by EN. Access does not equate to use or retention.

3.13.2.b.a.2. Expediency. If the requestor is seeking records held by EWEB, EN will recommend the requestor deal directly with EWEB in the interest of expediency. If the requestor maintains they would like their request completed by EN, the Parties will work together to determine what is releasable and what is not.

3.13.2.b.a.3. Acknowledgement. Upon receipt of a PRR, EN will respond to the requestor within 5 (five) business days and acknowledge receipt of the request while providing an estimated deadline by which the records requested will be produced. If the requestor is seeking records held by EWEB, EN will contact EWEB to determine the time needed to review the records and respond to the request.

3.13.2.b.a.4. Notification. Upon discovery that records sought include records created or held by EWEB, EN will notify EWEB of the request and

initial estimated deadline. EN will also advise EWEB of a deadline by which a response is required to avoid EN violating RCW 42.56.

3.13.2.b.a.5. Impasse. If EWEB and EN reach an impasse as to what can be released, EWEB will advise EN whether it intends to challenge the disclosure and, if so, whether EWEB seeks additional time beyond the initial estimated deadline to seek a protective order relating to the materials. EN shall extend the time estimate for disclosure via notification to the requester, to allow EWEB additional time to respond under this subsection if the extension is reasonable under existing law defining reasonableness of disclosure timelines under RCW 42.56. Seven (7) judicial days shall be deemed a sufficiently reasonable period of time to seek injunctive relief until a court can make a final determination as to releasability.

3.13.2.b.a.6. Amendment. This procedure may be amended from time to time as deemed necessary by the Parties without requiring renegotiation of the Agreement.

3.14. Suspension of Services. EN shall have the right to suspend performance due to:

3.14.1. Unsafe Conditions. EN shall have the right to suspend all or part of Services as warranted to avoid Unsafe Conditions. Upon encountering a condition necessitating the suspension of Services, EN shall immediately notify EWEB and not resume performance of such until the condition is rectified to the satisfaction of the Parties. In the event of an unsafe condition EN shall be permitted to take action in an effort to prevent, or mitigate as much as practicable, threatened damage, injury, or loss. If EN's provision of Services or Additional Services conforms to the Standard of Care set forth in Section 7 herein EN shall be entitled to a WRO for any increased costs reasonably incurred and scheduling delays resulting from its action in responding to an unsafe condition.

3.14.2. Adverse Change to an Applicable Permit. Should any Applicable Permit(s) necessary to the lawful operation of the Project become suspended or revoked, EWEB shall notify EN within two (2) calendar days in accordance with Section 12.8 herein this Agreement. To the extent the aforementioned prohibits or limits by operation of law or regulation EN's provision of Services the Parties hereby agree that EN may in its sole discretion cease the provision of such without any liability until such legal or regulatory prohibition or limitation is negated. In the event EWEB determines it will no longer sell electric power generated by the Project, the Parties agree to the process identified in Section 11.2 herein.

3.15. Threatened Release of Hazardous Materials. In the event EN encounters any threatened release of, or threatened exposure to, Hazardous Materials at the Project or Project Site (including but not limited to asbestos and lead paint), EN may immediately stop any work likely to result in a release of or exposure to such materials and shall not be obligated to resume work in the area affected until the condition is removed or abated by EWEB. EN shall where reasonable notify EWEB and receive direction, and if such direction is not provided or cannot be provided in a timely fashion, shall take action in an effort to prevent, or mitigate as much as practicable, threatened damage, injury, or loss in accordance with Prudent Utility Practices.

3.16. Accounting, Audit Rights. EN shall keep and maintain books, records, accounts and other documents sufficient to reflect accurately and completely all Project Costs incurred pursuant to this Agreement and any other costs which are the basis of a payment hereunder. Such records shall include receipts, memoranda, vouchers, inventories, and accounts of every kind and nature

pertaining to the goods and services, as well as complete copies of all contracts, purchase orders, service agreements and other such agreements entered into in connection therewith. EWEB, its designees, and any independent auditor appointed by EWEB, and State of Washington Auditor, shall have access, upon reasonable advance notice in writing, to all such records maintained by EN, for the purposes of auditing and verifying Project Costs or any other costs or expenses claimed to be due and payable hereunder. Such Parties shall have the right to reproduce any such records at their expense, and EN shall keep and preserve all such records for a period of at least three (3) years from and after the close of the Calendar Year in which such Project Costs were incurred. EN shall keep records of partial releases of mechanics liens and materialman liens, if any.

4. OBLIGATIONS OF EWEB

- 4.1. Payment for Services. EWEB shall pay EN all sums to which it is entitled under the terms and conditions of this Agreement, including Additional Services, if any, which are: (a) agreed to in advance; or (b) otherwise authorized in this Agreement or WRO. In no event shall EWEB pay for Services or Additional Services unless such services have been performed.
- 4.2. Emergency Notification. EWEB shall provide EN with 24/7 contact information such that a designated EWEB Representative can be reached by EN if needed at all times.
- 4.3. EN and EWEB Coordination. EWEB shall not unreasonably interfere with work conducted by EN related to the Project. EWEB shall provide EN reasonable notice, including by electronic mail, of any plans to limit access within the Project Site or undertake activities that may affect normal operation of the Project.
- 4.4. Project Tools and Supplies. EWEB shall provide the project supplies and project tools set forth in Exhibit H, which shall remain the property of EWEB.
- 4.5. Project Site Fuel Storage and Use. If necessary EWEB shall be responsible for the provision, maintenance and control of storage facilities including containments for gasoline and diesel fuels, oils, or other liquid or combustible fuels on the Project Site. EN's use of such fuels for Services shall be limited to instances of written permission from EWEB.
- 4.6. Procuring Applicable Permits. Unless otherwise required by Applicable Law, EWEB (with the "cooperation and support of EN" where necessary) shall be solely responsible for renewing all Hydro and Project required Applicable Permits. For purposes of this Agreement, the term "cooperation and support of EN" shall only mean provision of information and records required to maintain or renew Applicable Permits.
- 4.7. Regulatory and Governmental Fees. EWEB shall pay any regulatory fees chargeable to the owner of the Project, except in the case of negligence or misconduct by EN, in which case EN shall pay any regulatory fees or fines.
- 4.8. Project Site Safety Matters. To the extent either Party observes or becomes aware of a condition or information that could reasonably be interpreted as a risk to the safety of persons or property within the Project Site each Party shall immediately notify the other of such.
- 4.9. Funding of Services. EWEB shall provide funding for Project maintenance and repairs including emergency repairs, capital repairs and necessary improvements or other changes to the Project in amounts sufficient to maintain compliance with all Applicable Permits or as may be required by

Applicable Laws or to meet industry safety standards. EN shall have no obligation to provide funds for any repairs, improvements or other changes to the Project, including emergency repairs, and shall be entitled to suspend performance of the Services to be provided hereunder (upon reasonable notice and subject to EN's obligations under Section 7 of this Agreement) without liability of any kind in the event EWEB fails to provide funding for any such repairs, improvements or other changes to the Project including emergency repairs.

- 4.10. Taxes. EWEB shall pay all taxes applicable to its receipt of goods and services from EN under this Agreement and all property, value added and transactional taxes. EN shall include sales tax charges, separately identified, in the EN invoices to EWEB if applicable. EN shall only be responsible for taxes applicable to its provision of Services herein which may include, state and federal employment taxes, State excise taxes and payroll taxes relative only to Services in the State, and State of Washington business and occupation taxes.
- 4.11. Emergency Plans. EWEB shall provide an emergency notification plan, public safety plan, OSPCC plan, and any other plans as required by law or regulation applicable to both an owner and operator to govern the Project Site and EN's Project Services.

5. AMENDMENT/CHANGE REQUESTS

- 5.1. Amendments to the Agreement. EWEB and EN may amend this Agreement at any time only by written amendment executed by EWEB and EN. EN shall submit a written request to EWEB's designee prior to any amendments to the Agreement. Any amendment to the Agreement shall require the signature of both parties' authorized representatives. Amendments increasing the total Agreement amount above 25% of the original Agreement amount shall require approval of the EWEB Board of Commissioners for every increase.
- 5.2. Change Requests to WRO. EWEB may, with the agreement of EN, issue written directions for changes to Services or Additional Services ordered through an approved WRO. Such changes shall be the subject of a written change request which will result in an amendment to a WRO signed by EWEB's and EN's approving authority.

EN shall submit in writing to EWEB claims for changes to the Services or Additional services, associated to a WRO, but no change shall be authorized unless agreed to by EWEB in writing unless said change is related to EN's recovery of costs specifically provided for elsewhere in this Agreement. Claims of changes to the Services or Additional services must be made and agreed to with EWEB prior to the performance of the Services. Changes that both Parties have agreed to shall be documented in a WRO amendment.

Notwithstanding the conditions in the previous paragraph, so long as EN's provision of Services conforms to the Standard of Care set forth in Section 7, EN shall be entitled to a WRO amendment for EN's materially increased reasonable costs resulting from:

- (a) Unforeseeable regulatory burdens (including but not limited to audits, investigations, and remedial actions) materially increasing EN's costs to operate the Project;
- (b) After-hours operations required by EWEB or by Prudent Utility Practice and not accounted for in Exhibit A-1;
- (c) Suspension of Services under Section 3.15; and
- (d) Unauthorized Services necessary to prevent or minimize Emergent Events per Section 2.6.

6. COMPENSATION AND BILLING PROCEDURES

6.1.

The EWEB's policy is to pay its invoices via check. To initiate payment of invoices, EN shall submit an invoice electronically to EWEB Accounts Payable (accountspayable@eweb.org) and Carbon Copy to Primary Operating Committee member.

Upon verification of the data provided, the EWEB Representative shall authorize EWEB payment for services rendered. All payments shall be in United States currency. Payment of any invoice, however, does not preclude the Parties from later determining that an error in payment was made and from withholding the disputed sum from the next monthly payment until the dispute is resolved.

6.2. Audits. The Parties have the authority to audit the others records associated with this Agreement. The Parties shall fully cooperate with the other's audit of the records at any time. EWEB reserves the right to request additional documentation to support EN's expenditure of funds complied with the Agreement and on the progress of work, Services, or actions required from EN.

EN shall also fully cooperate with an audit to account for all expenses if necessary.

In the event this Agreement is terminated all unexpended EWEB funds shall be returned to EWEB within sixty (60) days of said termination.

If applicable, EN shall keep vendor receipts and evidence of payment for materials and services, time records, payment for program wages/salaries and benefits. All receipts and evidence of payments shall be promptly made available to EWEB Project Manager or other designated persons, upon request. At a minimum, such records shall be made available and may be reviewed as part of the annual monitoring process.

6.3. Invoicing. Invoices submitted by EN to EWEB shall only be submitted to the Finance Office electronically.

Email address is as follows: (accountspayable@eweb.org)

EN shall maintain accounts so as to permit conversion to the system of accounts prescribed for electric utilities by FERC. The allocation of costs by EN to accounts pursuant to this Agreement shall be binding on EN and EWEB only for purposes of this Agreement.

EN shall submit an invoice for all Services or Additional Services for the preceding month no later than the 15th calendar day of each month. The invoice shall list separately amounts authorized by: (a) EN's Annual Maintenance and Maintenance Management Cost; (b) fixed-price WROs; and (c) cost-based WROs.

6.3.1. EN's Annual Maintenance and Maintenance Management Cost. EN shall invoice 1/12 of the approved EN Annual Maintenance and Maintenance Management cost each calendar month.

6.3.2. Fixed-price WROs. EN shall invoice against fixed-price WROs, if any, based on a payment schedule, or based upon percentage of completion of the work authorized by the WRO.

6.3.3. Cost-based WROs. EN shall invoice against variable cost WROs, if any, and shall include an itemization of EN's actual costs, including in-directs, overheads, and profit as authorized in Exhibit C. EN shall state in the invoice the percentage of each task that has been completed at the end of the billing period.

All invoices shall include EWEB's Agreement number, EWEB Project Manager, WRO number, WRO scope of work/project title, EN contract number and the following statement bearing the name of EN's representative who approved the invoice: "By submitting this invoice to EWEB, [EN representative] certifies that, to the best of his or her knowledge EN is entitled to the payment requested under the terms and conditions of their Agreement." Separate invoices shall be submitted by EN for each WRO.

- 6.4. Payment Processing. Payment from EWEB is due thirty (30) days from receipt of invoice. If payment is not received, account due statements may be provided to EWEB and payment must be made to EN not later than sixty (60) days from receipt of invoice (unless EWEB has provided EN notice of disputed charges as set forth in this Agreement) to prevent potential delays or suspension of services. If EWEB has notice, or with reasonable diligence could have had notice, of any valid reason for disputing any portion of an invoice, EWEB will so notify EN in writing within twenty (20) calendar days of receipt of invoice by EWEB, and if no such notification is given, the invoice will be deemed valid. The portion of an invoice that is not in dispute shall be paid in accordance with the procedures set forth herein. Any portion of the invoice in dispute shall be resolved in accordance with Section 12.10 of this Agreement within thirty (30) days of the receipt by EN of the notice from EWEB as provided in this section. Any court costs or other reasonable costs incurred by EN in collection of delinquent accounts, excluding any attorney fees, shall be paid by EWEB only to the extent that such outstanding amounts are determined to be due EN by a final, non-appealable decision of a court of competent jurisdiction.

7. STANDARD OF CARE

EN warrants that all Services and Additional Services shall be performed consistent and in accordance with applicable Prudent Utility Practices relating to operation and maintenance of the Project which includes the described transmission line and transformer. If EN believes compliance with a requirement or a direction given by EWEB will result in violation of any laws or regulations, EN shall so notify EWEB in writing immediately and shall not proceed pursuant to that requirement or direction until EWEB directs EN to proceed. To the extent of its authority, EN will transfer to EWEB its rights to any manufacturer's warranties associated with goods or services EN procures in performing Services or Additional Services. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise.

THIS SECTION 7 SETS FORTH THE ONLY WARRANTIES PROVIDED BY EN CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. EWEB represents that it has no knowledge of any hazardous materials on site including lead paint and asbestos at the Project Site.
- 8.2. EWEB represents that it is not aware of any union having a claim to any of the work to be performed under this Agreement. In the event that prior to or during the time EN performs work under this Agreement any union asserts that the work: (a) must be performed by members of that union, or (b) that EN must recognize the union as the representative of employees that will perform the work, then EN may terminate this Agreement in accordance with Section 11.2.

- 8.3. PGE previously maintained and operated the Project on EWEB's behalf. To assist Project maintenance and operations, PGE used Programmable Logic Controller Code Information related to a Supervisory Control and Data Acquisition system (SCADA Information). PGE provided the SCADA Information to EWEB and EWEB has, in turn, provided the SCADA Information to EN. EWEB makes no representation as to the accuracy or efficacy of the SCADA Information. EN waives any and all liability against EWEB for any damage EN may incur due to its reliance upon the SCADA Information.

9. PRE-EXISTING CONDITIONS

To EWEB's actual knowledge, the Project is in good working order, properly maintained in accordance with all manufacturers' maintenance requirements and Prudent Utility Practices applicable to the Project, and in compliance with all Applicable Laws and Applicable Permits, in each case, in all material respects, except for Pre-existing Conditions as described herein this Section 9 and as disclosed in Exhibit D. EN has been afforded the opportunity to review EWEB's documentation of all Pre-existing Conditions listed in Exhibit D. Notwithstanding any other term or condition of this Agreement, EN shall have no liability of any kind or nature (subject to EN's obligations under Section 7 of this Agreement), whether in contract or in tort, at law or in equity, arising out of or relating to any condition of the Project or Project Site that existed prior to the date EN commenced providing Services, whether known or unknown, knowable or unknowable, or for any violation of any Applicable Law or Applicable Permit (each, a "Pre-existing Condition"). Within ninety (90) days of execution of this Agreement, EWEB and EN shall jointly conduct a pre-existing condition inspection, Project Site survey and review of the Project and Project Site to identify any Pre-existing Conditions, and shall update Exhibit D. If following this inspection, EWEB and EN become aware of any violation of Applicable Law or Applicable Permit, both Parties agree to undertake a mutual investigation and resolution at the sole cost and expense of EWEB.

10. LIABILITY, INSURANCE AND INDEMNITY

- 10.1. **Limitation.** Under no circumstances, with the limited exception of gross negligence or willful misconduct, shall EN or EWEB be liable to the other for any special, indirect, consequential damages, or loss of power or profits, or punitive damages. The limitation of liability set forth in this Section 10.1 is for any and all matters for which EN or EWEB may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, or in tort resulting from general negligence, strict liability or otherwise and is limited to the established limits defined by the respective State's Tort Claims limits. Nor shall EN or EWEB be liable to the other for any claims or damages to the Project facilities or equipment caused by a third-party, or criminal act or security breach of a third-party.

10.2. **Indemnity.**

10.2.1. **Energy Northwest.** To the fullest extent allowed under applicable law, and subject only to the limitations provided herein, EN shall defend, indemnify and hold harmless EWEB and its officers, and employees, against all claims, demands, losses and liabilities arising from, resulting from or connected with acts or omission by EN while providing the Services performed or to be performed under this Agreement by EN or EN's agents or employees, for bodily injury or wrongful death to persons and damage to property even though such claims may prove to be groundless or fraudulent. The amount of EN's indemnification obligation is expressly limited to the required insurance limits set forth in Exhibit B hereto.

10.2.2. **EWEB.** Subject to the limitations and conditions of the Oregon Constitution, and the Oregon Tort Claims Act, EWEB shall defend, indemnify and hold harmless EN and its

officers, and employees, against all claims, demands, losses and liabilities arising from, resulting from or connected with acts or omissions by EWEB while providing the Services performed or to be performed under this Agreement by EWEB or EWEB's agents or employees, for bodily injury or wrongful death to persons and damage to property even though such claims may prove to be groundless or fraudulent.

- 10.2.3. Each Party further agrees that its, defense, indemnity and hold harmless obligations shall apply to Claims made by its own employees against an Indemnitee, but in that instance only to the extent of the Indemnitor's own negligence or fault in whole or partly causing the claimant's damages.
- 10.3. Insurance. EN shall at its own expense maintain during the Term of this Agreement without interruption the coverages of insurance, with limits of no lesser amounts, as set forth in Exhibit B. EN acknowledges that EWEB is self-insured and will not obtain a separate insurance policy for this Agreement. EWEB's self-insurance is subject to the conditions and limitations of the Oregon Constitution, and the Oregon Tort Claims Act.
- 10.4. Survival. Sections 7 through 10 shall survive the expiration or termination of this Agreement for all purposes.
- 10.5. Hold Harmless. For any and all claims, actions, or lawsuits related to or originating from occurrences or events alleged to have occurred during the Term of this Agreement concerning the subject(s) set forth in Sections 10.5(a)-(c) below, EWEB shall indemnify, defend, and save harmless (subject to the limitations and conditions of the Constitution, and the Tort Claims Act) EN and its employees, officers, agents, and contractors from and against any and all claims and liability for damages, costs, fines, or fees, but excluding attorneys' fees, arising from the following:
- (a) The presence or occurrence of any conditions or substances foreign to the River, its surrounding environment, or properties including but not limited to the Dam, unless the presence or occurrence of such through independent investigation at the equally-shared expense of EWEB and EN is determined to be the direct result of EN's acts or omissions. The results of the independent investigation shall determine whether EWEB or EN, shall be responsible for abating the condition or foreign substances, communicating with Governmental Authorities, resolving any fines, penalties or other enforcement action, all in accordance with Applicable Laws. The extent of either Party's responsibility herein is subject to their limits of liability set forth in Sections 10.1 and 10.2.
 - (b) The presence of any pre-existing Hazardous Materials at the Project, Project Site or Hazardous Materials introduced to the Project or upon the Project Site by a person or entity other than EN, unless the presence or occurrence of such through independent investigation at the equally-shared expense of EWEB and EN is determined to be the direct result of EN's act or omission whereupon EN's liability shall be limited as set forth in Section 10.1 herein.
 - (c) Project and Project Site properties and equipment failures and damages, including normal wear and tear, if EN's provision of Services complied with the Standard of Care set forth in Section 7 herein.

11. TERM AND TERMINATION

- 11.1. Term. This Agreement commences on the Effective Date and ends on December 31, 2025 (the "Term"). The "Effective Date" means the last date on which either EWEB or EN executes this Agreement. The Term shall be automatically renewed thereafter for successive terms of one (1)

year, unless either Party terminates this Agreement. Either Party may exercise its annual right to terminate by delivering written notice to the other Party at least one (1) year prior to the end of the Term.

- 11.2. Termination for Cause. Either Party shall be entitled to terminate this Agreement in the event that the other Party: (a) is in breach of its obligations that affect the operations of the Project (an “Operational Breach”) and such Operational Breach is not cured within ten (10) days of written notice setting forth the basis for the alleged breach; (b) is in breach of an obligation that is not an Operational Breach and such breach is not cured within thirty (30) days of written notice setting forth the basis for the alleged breach; (c) makes a voluntary commencement of any proceeding seeking relief under any bankruptcy, insolvency, reorganization or similar law; or (d) becomes insolvent or is subject to an involuntary petition or any involuntary filing under any bankruptcy, insolvency, reorganization or similar law. EWEB shall be entitled to terminate this Agreement in the event EWEB determines it will no longer sell electric power generated by the Project; in that event EN will continue to complete Services as authorized by any WROs until EWEB surrenders the Project’s Federal Energy Regulatory Commission (FERC) license and FERC accepts EWEB’s surrendered license. EWEB’s right to terminate based on its decision to no longer sell electric power generated by the Project does not include circumstances where a change in Project ownership results in EWEB no longer selling electrical power. In the event of change in Project ownership EWEB shall assign the Agreement, to the extent EWEB has authority to do so, to the new Project owner subject to Section 12.9 herein.

Termination requires written notice to the other Party. The Agreement shall terminate ninety (90) days from the date of receipt of notice or at another mutually acceptable Termination Date. Unless otherwise agreed, EN shall wind down operation of the Project in accordance with Prudent Utility Practices, including but not limited to:

- (a) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services as is not terminated;
 - (b) If requested by EWEB in writing, cancel all orders and subcontracts, upon terms acceptable to EWEB, to the extent that they relate to the performance of Services terminated;
 - (c) Take such action as may be necessary or as directed by EWEB to preserve and protect the Project, Project Site, and any other property related to this Project in the possession of EN in which EWEB has an interest; and
 - (d) Submit within fifteen (15) days to EWEB a written termination settlement proposal and enclosed invoice for costs, fees, and expenses owing to EN; and
 - (e) Stop performing Services on the date specified in the written notice of termination; and
 - (f) Surrender to EWEB all tools, supplies, and inventory of EWEB relating to the Project.
- 11.3. Termination Payment. EWEB shall review any termination settlement proposal or proposal for equitable adjustment submitted by EN within thirty (30) days of receipt. EWEB may request additional information or documentation from EN in support of any such proposal submitted and EN shall have fifteen (15) days to provide a response. EWEB shall pay the undisputed amount of any settlement proposal or proposal for equitable adjustment submitted by EN within fifteen (15) days after the receipt of any information or documentation it has requested from EN, or within forty-five (45) days of the receipt of the proposal, whichever is earlier. Any amounts not paid by EWEB shall be subject to Section 12.10 of this Agreement.

12. MISCELLANEOUS

- 12.1. License for EN to access Project Site. Without expense to EN, EWEB grants EN, its employees, agents, contractors, and subcontractors physical access to the Project Site and all therein on a twenty-four (24) hours a day, seven (7) days a week basis, including rights of way and easements required for unconditional and safe access of such persons and equipment, as necessary to permit EN or its designee to perform the Services. EWEB may impose reasonable restrictions on access to the Project Site so long as such restrictions do not interfere with or delay EN's or its designee's (once EN or its designees have been successfully screened through the EWEB's Security Access procedures and appropriate on-site training) performance of obligations hereunder. Any limitation or restriction on access to the Project Site which causes a material increase of the cost, materially impacts the schedule of Services, or otherwise materially affects the performance of EN's obligations under this Agreement shall entitle EN to a WRO to recover said costs.
- 12.2. Project Liens. Except as expressly directed by EWEB in writing, EN shall not assume, create or suffer to exist or be created any lien on the Project or any portion thereof.
- 12.3. Headings. The headings contained in this Agreement are for convenience and reference only, do not form part of this Agreement, and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.
- 12.4. Insecurity and Adequate Assurances. If EWEB's long-term credit rating drops below Investment Grade, EN may demand in writing adequate assurances of EWEB's ability to meet its payment obligations under this Agreement. Unless EWEB provides the assurances in a reasonable time and manner acceptable to EN, in addition to any other rights and remedies available, upon at least seven (7) calendar days' notice to EWEB Representative, EN may partially or totally suspend its performance while awaiting assurances, without liability to EN.
- 12.5. Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.
- 12.6. Waiver. Waiver of any breach of this Agreement by either Party shall not be considered a waiver of any other subsequent breach or any other term, covenant or condition contained in this Agreement, whether of the same or different character.
- 12.7. Independent Contractor. EN is an independent contractor to EWEB and, except as set forth in this Agreement including related Work Release Orders, has no authority to act on behalf of, or to represent itself as having such authority on behalf of EWEB. This Agreement does not establish any partnership or joint venture relationship between the Parties.
- 12.8. Notices. All notices or other communications hereunder shall be in writing or written electronic format and shall be deemed given when delivered to the address (including electronic mail address with confirmation) specified in Exhibit I (as may be revised from time to time) or such other address as may be specified in a written notice in accordance with this Section. Either Party may, by sending a revised and dated Exhibit I to the other Party, revise their addresses and/or persons designated for receipt of notices. For purposes of RCW 39.34.030(4)(a), both the EN Procurement Specialist and EWEB's Generation Contract's Supervisor identified in Exhibit I will serve as their party's administrators to this Agreement.

- 12.9. Assignment. This Agreement is not assignable or transferable by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 12.10. Disputes; Costs to Prevailing Party. EN and EWEB recognize that disputes arising under this Agreement are best resolved at the working level by the Parties directly involved. Both Parties are encouraged to be imaginative in designing mechanisms and procedures to resolve disputes at this level. Such efforts shall include the referral of any remaining issues in dispute to higher authority within each participating Party's organization for resolution. To the extent such discussions do not resolve such dispute, the Parties agree to submit all claims, disputes or other matters in question between the Parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation. Failing resolution of conflicts at the organizational level, then the Parties may take other appropriate action subject to the other terms of this Agreement. In the event of litigation, the prevailing Party in such action shall be entitled to its reasonable expenses and fees, including its expert fees and costs but excluding its attorneys' fees.
- 12.11. Representations; Counterparts. Each Party hereto represents that such person is duly and validly authorized to do so, on behalf of such Party, with full right and authority to execute this Agreement and to bind such Party with respect to all of its obligations hereunder. Each Party hereto represents that this Agreement constitutes its legally, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally, and general equitable principles whether considered in a proceeding in equity or at law. This Agreement may be signed in counterparts, each of which will be an original for all purposes, but all of which taken together will constitute one and the same agreement.
- 12.12. Residuals. Subject to Section 12.18, EN and EWEB may use ideas, concepts, know-how, methods, models, data, techniques, skill, knowledge and experience that were used or developed by EN or EWEB in connection with this Agreement.
- 12.13. Non-solicitation of Employees. During and for one (1) year after the Term of this Agreement, EWEB will not affirmatively solicit the employment of, or employ EN's personnel, without EN's prior written consent.
- 12.14. Cooperation. EWEB will cooperate with EN in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. EWEB agrees that EN's performance is dependent on EWEB's timely and effective cooperation with EN. Accordingly, EWEB acknowledges that any material delay by EWEB may result in EN being released from a scheduled deadline or in EWEB having to pay extra fees for EN's agreement to meet a specific obligation or deadline to the extent such delay by EWEB demonstrably causes EN to be delayed and suffer additional costs.
- 12.15. Governing Law and Interpretation. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without regard to the principles of conflicts of law. Each Party agrees that any action arising out of or in connection with this Agreement shall be brought, if in the state courts, in the Lane County Superior Court, and if in the federal courts, in the United States District Court for Lane County, Oregon.
- 12.16. Entire Agreement; Survival. This Agreement, including any Exhibits, states the entire Agreement between the Parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the Parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts

(whether oral or written) between EWEB and EN respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the Parties hereto.

- 12.17. Force Majeure. Neither Party shall be responsible for any failure in performance due to Force Majeure. "Force Majeure" means an event which is not within the reasonable control of the Party claiming Force Majeure (the "Claiming Party"), and not due to the fault or negligence of such Party and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include, but is not restricted to: acts of God; fire; flood; drought; civil disturbance; material shortage; sabotage; action or restraint by court order to public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action).
- 12.18. Use by Third Parties; Confidentiality. Services performed by EN pursuant to this Agreement are only for the purpose intended and may be misleading if used in another context. Neither EN nor EWEB shall use any documents produced under this Agreement for anything other than the intended purpose without written permission of the other Party. This Agreement shall, therefore, not create any rights in or benefits to Parties other than EWEB and EN. EN may be granted access to information that is exempt from disclosure to the public and may contain "trade secrets" when it is necessary for EN to perform its obligations pursuant to this Agreement. If EN is granted such access to confidential information, EN shall be considered to be acting as an agent of EWEB. EN shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, monitoring results or any other non-public information pertaining to the Services assigned to EN by EWEB or other Project information to which EN has had access during the Term of this Agreement, unless required by operation of applicable law or court order of a court of competent jurisdiction, after following the process set forth in Section 3.14 herein.
- 12.19. Anti-Terrorism; Sanctions. EN represents and warrants that:
- (a) It is not a person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC") or in Section 1 of Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism);
 - (b) It does not engage in any dealings or transactions with any such persons described in sub-clause (a) above; and
 - (c) Is not otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act or any other similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing.

EN further agrees to promptly deliver notice to EWEB in the event that any of these representations and warranties is no longer true.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last below written:

Eugene Water & Electric Board

DocuSigned by:
Rod Price
Signature

Name Rod Price

Chief Operations Officer

Title

5/15/2020

Date

Energy Northwest

Brad Sawatzke
Signature

Name Brad Sawatzke

Chief Executive Officer

Title

5/14/20

Date

DS
SG

EWEB Contract Number: 20-105-IGA
EN Contract Number: X-40683

Exhibit A-1
Work Release Order (WRO) 001

Project Operation and Maintenance (O&M) and Annual Maintenance Outage Services

Exhibit B
Insurance Coverage

Without limiting any liabilities or any other obligations of EN, EN shall, prior to commencing Services, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A- or better such insurance as will protect EN from liability and claims for injuries and damages which may arise out of or result from EN's actions under the Agreement and for which EN may be legally liable, whether such operations are by EN or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. EN shall insure the risks associated with the Services and this Agreement with minimum coverages and limits as set forth below. EN shall maintain such claims-made policies for a period of at least three (3) years after the expiration or termination of this Agreement. Limits may be met through the combination of primary and excess policies.

To the extent the Parties agree any insurance coverage(s) beyond those required in this Agreement are necessary, such coverage(s) will be secured via the terms of a WRO agreed to by the Parties.

To the extent of its authority EN grants to EWEB a waiver of any right to subrogation which any insurer of EN may acquire against EWEB by the payment of any loss by any insurer for the coverages listed below. EN agrees to obtain any endorsement that may be necessary to waive an insurer's right of subrogation, but this provision applies regardless of whether EWEB has received a waiver of subrogation endorsement from the insurer.

Workers' Compensation. All subject employers working under this contract are either employers that will comply with ORS 656.017 which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers, or employers that are exempt under ORS 656.126. [2003 c.794 §76c] In addition, Contractor will obtain, at contractor's expense, and keep in effect during the term of this contract, Employers Liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and a \$1,000,000 policy limit for bodily injury by disease.

The insurance must provide that insurer waives all rights to recover any payment made from EWEB, its' divisions, officers, and employees.

Employers' Liability. EN shall maintain employers' liability insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. EN shall obtain, at EN's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance written on the current ISO occurrence form (or a substitute form providing equivalent coverage) including coverage for premises, operations, independent contractors (performing work on Contractor's behalf), completed operations and contractual liability. The limit shall not be less than \$1,000,000 per occurrence and subject to an aggregate limit of no less than \$5,000,000.

Coverage shall include the following:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage
- e. Coverage for explosion, collapse, and underground property damage
- f. Broad form property damage liability

g. Personal and advertising injury liability

The insurance must include EWEB, its' divisions, officers, and employees as additional insureds and must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by EWEB or other additional insureds is in excess of EN's insurance, contingent and non-contributory.

Business Automobile Liability. EN shall obtain, at EN's expense, and keep in effect during the term of this contract, Automobile Liability Insurance to cover liability arising out of any auto (including owned, hired and non-owned) used in connection with the work or services. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent.

The insurance must include EWEB, its' divisions, officers, and employees as additional insureds and must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by EWEB or other additional insureds is in excess of EN's insurance, contingent and non-contributory.

Umbrella or Excess Liability. EN shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above.

Contractors' Pollution Legal Liability. EN shall require its contractors', excluding its contractors who only provide personnel staffing services or only provide materials for the Project, maintain pollution liability coverage with a minimum limit of \$5,000,000 to apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollution into or above land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage and shall be written on an occurrence basis with limits as follows:

- a. Coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- b. Coverage for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically insured or destroyed; and
- c. Coverage for defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

EWEB does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of EN, and EN shall be solely responsible for any deficiencies thereof.

Except for workers' compensation, the policies required herein shall include provisions or endorsements naming EWEB of, its officers, agents and employees as additional insureds. The Commercial General Liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

EWEB Contract Number: 20-105-IGA
EN Contract Number: X-40683

To the extent of EN's negligent acts or omissions, all policies required by this Agreement shall include: (i) provisions that such insurance is primary insurance with respect to the interests of EWEB and that any other insurance maintained by EWEB is excess and not contributory insurance with the insurance required hereunder, (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage; and (iii) provisions that such policies are not be canceled: (a) ten (10) calendar days prior written notice to EWEB if canceled for nonpayment of premium; or (b) thirty (30) calendar days prior written notice to EWEB if canceled for any other reason. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against EWEB, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

EN acknowledges that EWEB is self-insured and will not obtain a separate insurance policy for this Agreement. EWEB's self-insurance is subject to the conditions and limitations of the Constitution, Article XI, Section 9, and the Oregon Tort Claims Act.

Exhibit C
Compensation for
Project Operation and Maintenance (O&M) and Annual Maintenance Outage Services

EN shall invoice EWEB in accordance Section 6 “Compensation and Billing Procedures” and as defined in the approved WROs.

“Additional Services Costs”

Any services in support of this Agreement requested by EWEB that are outside those described in Exhibit A-1 shall be Additional Services for reimbursement by EWEB upon invoicing based on actual costs incurred from the preceding month. Costs of Additional Services will fluctuate based on the operations and maintenance needs of the Project and by direction given by EWEB. Additional Services’ costs subject to EWEB reimbursement include but are not limited to, EN direct labor, travel costs, use of approved subcontractors, materials (subcontractors’ and materials costs include the suppliers’ invoiced cost to Energy Northwest), plus any applicable Energy Northwest overheads, costs of additional insurance specifically required for performance of Additional Services, and delivery costs that are attributable to the Additional Services.

“Additional Costs” for Services and Additional Services intended for full cost recovery include but are not limited to: i) payroll, payroll taxes, at risk compensation and fringe benefits; ii) per diem and travel expenses; iii) all reproduction and printing costs including electronic media; iv) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; v) computer, software, printers, scanners, office machines and related costs of operations including consumables; vi) insurance costs; vii) indirect and overhead burden; viii) handling service charges; and ix) Profit will be included as a part of these additional costs as indicated as a percentage of overall revenue and applied at 15%. Note: Additional costs may be in the form of an allocation for those specific costs noted above.

Travel - Travel shall be allowed only when the travel is essential to the discharge of EN’s responsibilities under the IGA. All travel and lodging shall be conducted in the most efficient and cost-effective manner resulting in the best value to EWEB. Reimbursable direct costs include pre-approved travel beyond a 225-mile radius from the Project. Personal expenses shall not be authorized at any time. Alcohol is not an authorized purchase under this IGA. Travel costs shall be reimbursed in accordance with EWEB’s or EN’s Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates. Refer to Exhibit J, Travel Expenses. Upon submitting invoices which indicate travel EN shall provide all travel receipts for any items being requested for reimbursement (other than on a per diem basis). All receipts shall indicate the company that payment was made to, detail describing the type of services purchased and the total amount paid initially by EN. All requests shall be in accordance with the limits of travel reimbursement. When submitting invoices and travel has been authorized and conducted by EN a separate line item shall be identified on the invoice.

Exhibit D
Pre-existing Conditions

Pre-existing Project and Project Site conditions as referenced in Section 9 of the Agreement also mean and include, but are not limited to, the following:

Penstock Lining Degradation
#1 Deflector Feedback Calibration
HPU filter D/P alarming
Inverter ground issue

Exhibit E
Applicable Project Documents

The “Applicable Project Documents” mean and include only the following:

Watershed Operations Standard Operating Procedure (SOP)
Penstock Inspection Program
Outage Request Procedure
Spill Prevention and Control
Vegetation Management
Pest Control
Public Safety Plan

Plant Standard Operating Procedures
 Hydro Equipment Operator Duties
 WSH-SC-OPS-ONI-0004 Dewatering the Penstock
 WSH-SC-OPS-OI-0001 Filling the Penstock
 WSH-SC-OPS-OI-0002 Filling the Casing
 WSH-SC-OPS-OI-0003 Prepare Unit for Operation
 WSH-SC-OPS-POT-0001 Rev 1 Switchyard Inspection for Oil Containment

Plant Maintenance Procedures
 WSH-SC-OPS-OI-0004 Nitrogen Regulator Adjustments
 WSH-SC-OPS-OI-0005 Cleaning Cooling and Service Water Screen
 WSH-SC-OPS-POT-0002 Annual Penstock Under-pressure and Radial Gate Trip Test
 WSH-SC-OPS-POT-0003 Monthly Emergency Generator Load Test

NESC requirements for underground cable
Oregon PUC requirements for substation and underground cables.

If equipment Owner's manuals, SOPs and instruction books are unavailable, the Contractor shall conduct additional work in coordination with the operating committee's approval to document a maintenance plan and operating procedure that shall be consistent with industry best practices and standards such as IEEE, ASME, NEC, NFPA, NESC and other reputable hydroelectric governing organizations.

Exhibit F
Applicable Permits

“Applicable Permits” mean and specifically include the following:

FERC conformed license #5264-002

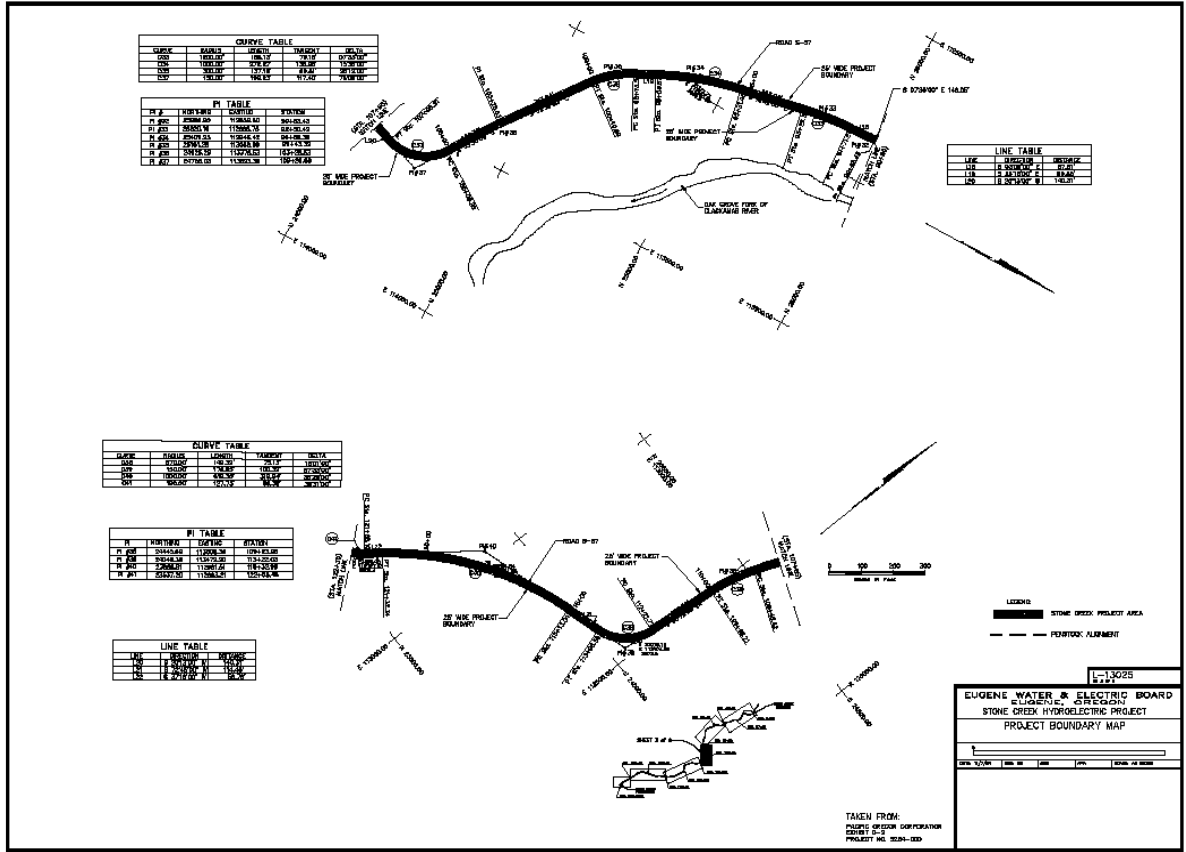
USDA Forest Service Special Use Permit Transmission Line CLA154

USDA Forest Service Special Use Permit Facility #4358-02

OWRD – PC 885 HE 303, Certificate Permit Number S51509

State of Oregon: Permit to Operate Boiler/Pressure Vessel #55386

Exhibit G
Project Site
As shown in FERC License 5264-02 Exhibit G



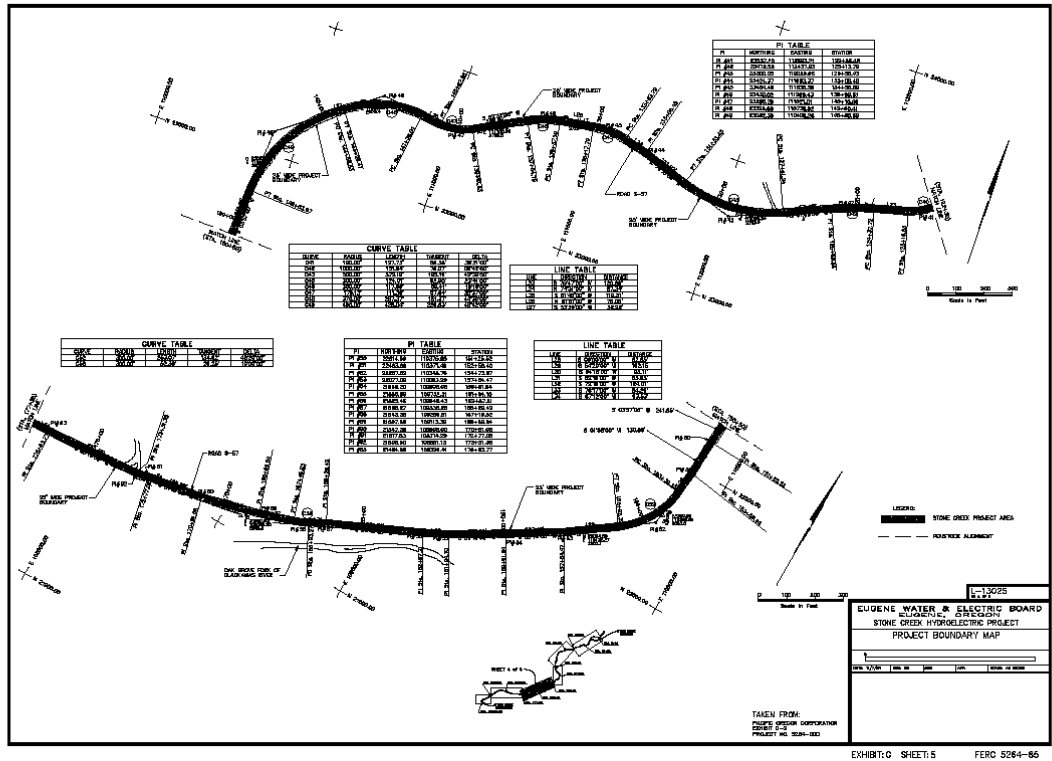


EXHIBIT: G SHEET: 5 FERC 5264-65

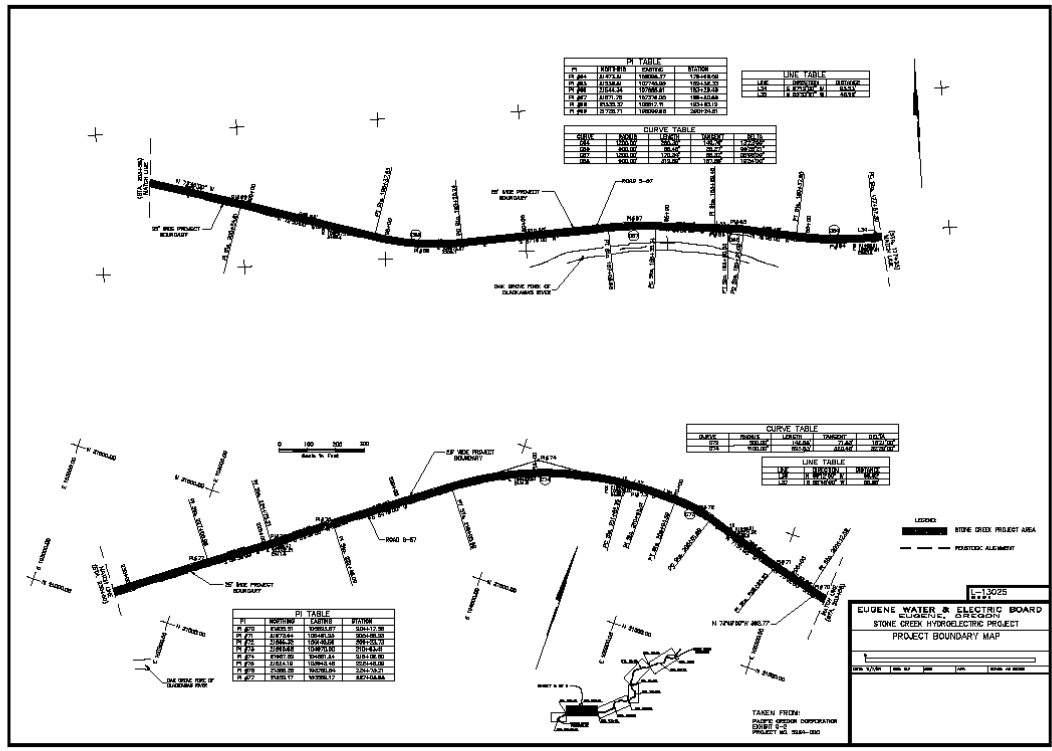
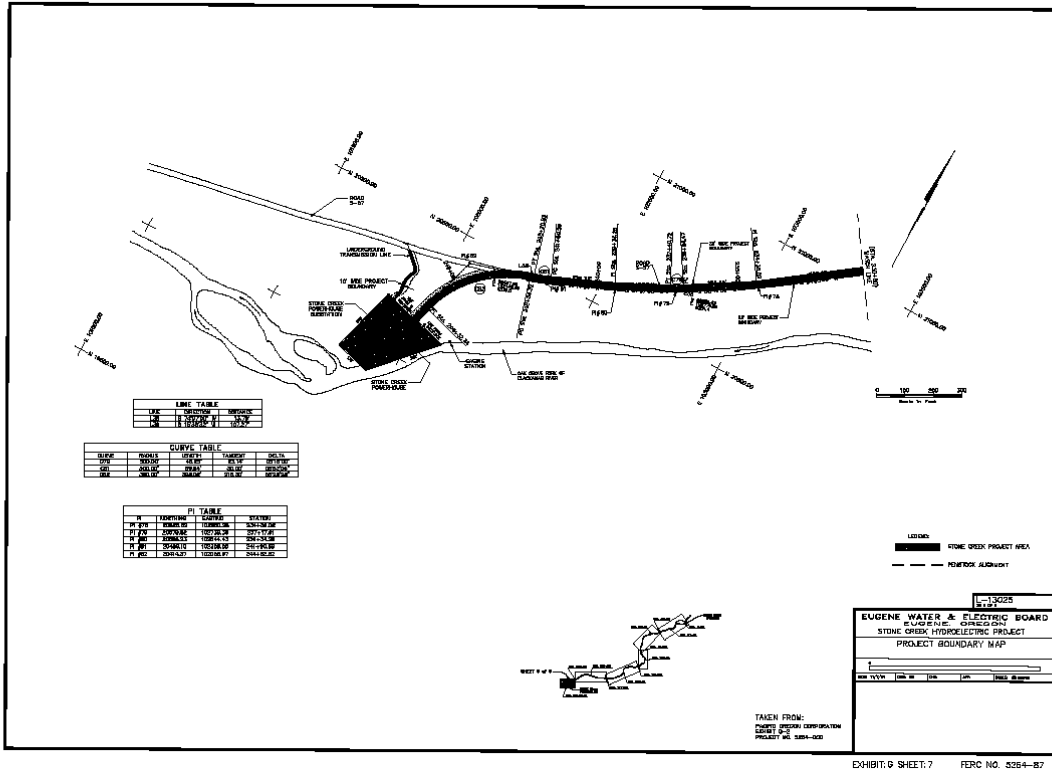
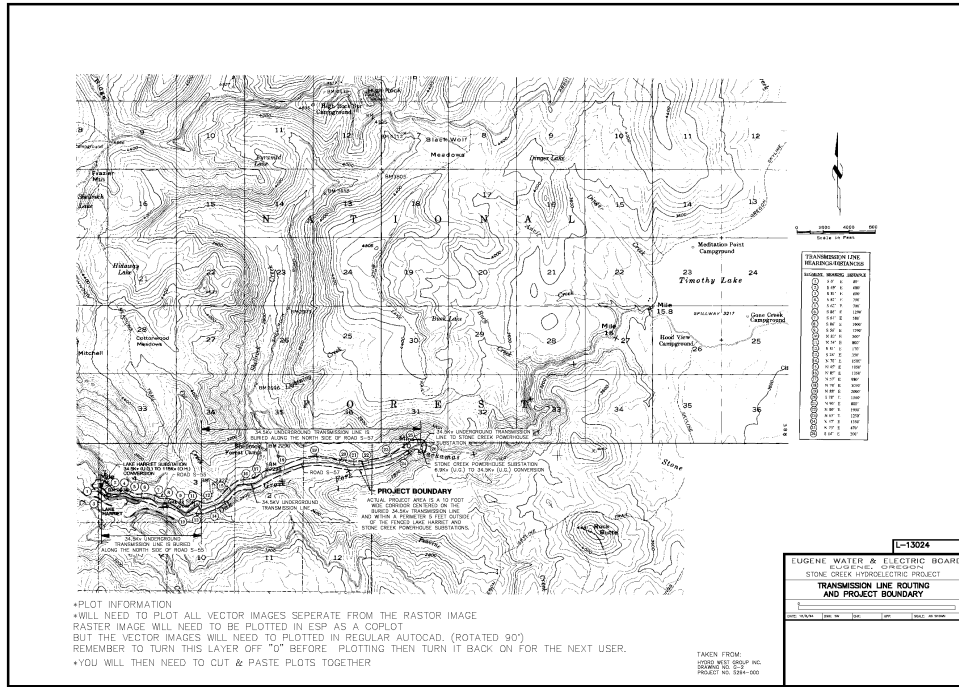
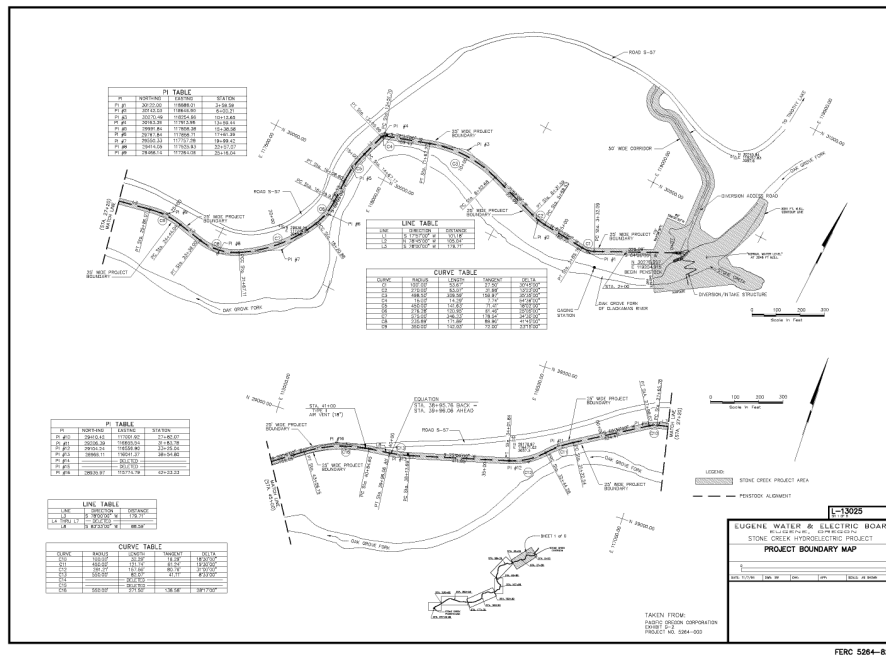


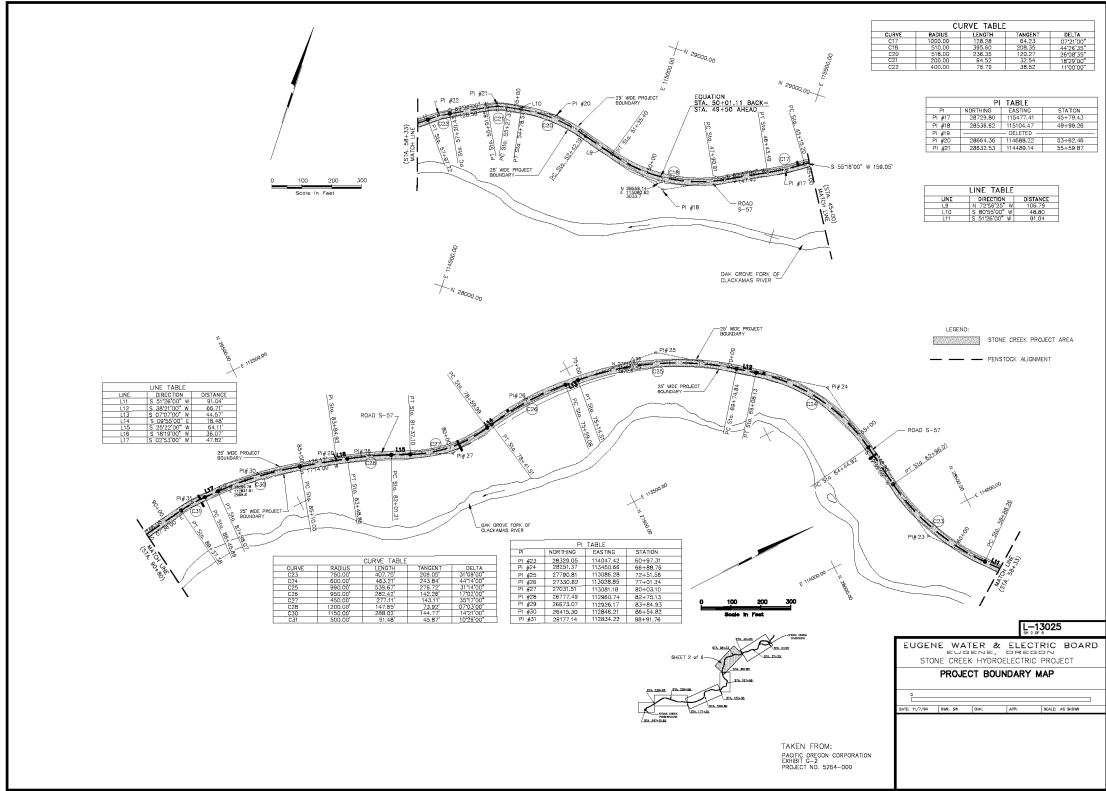
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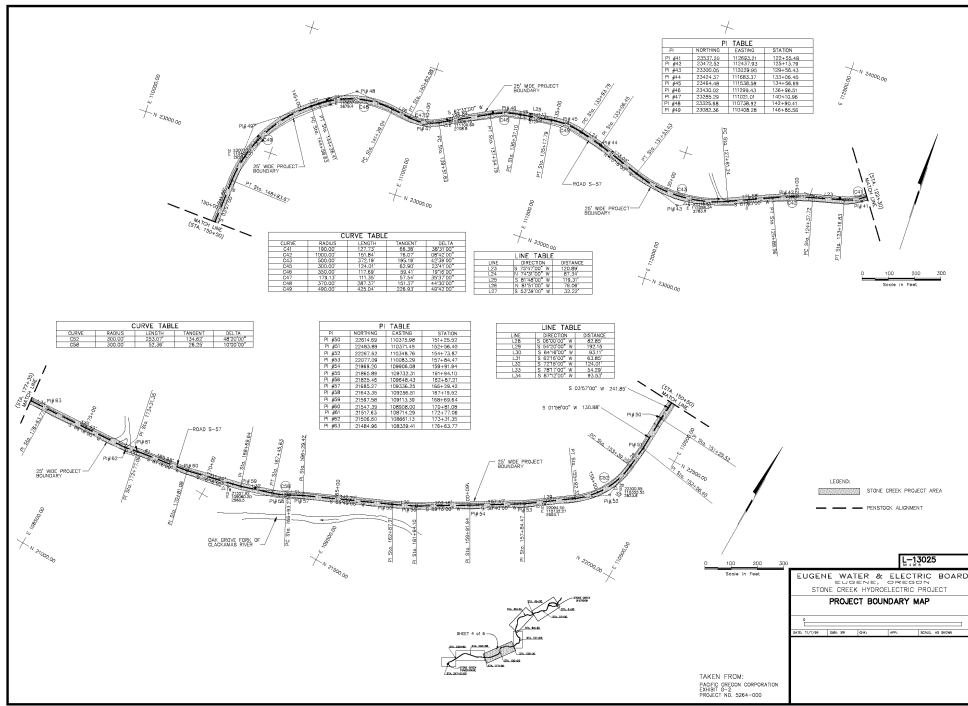
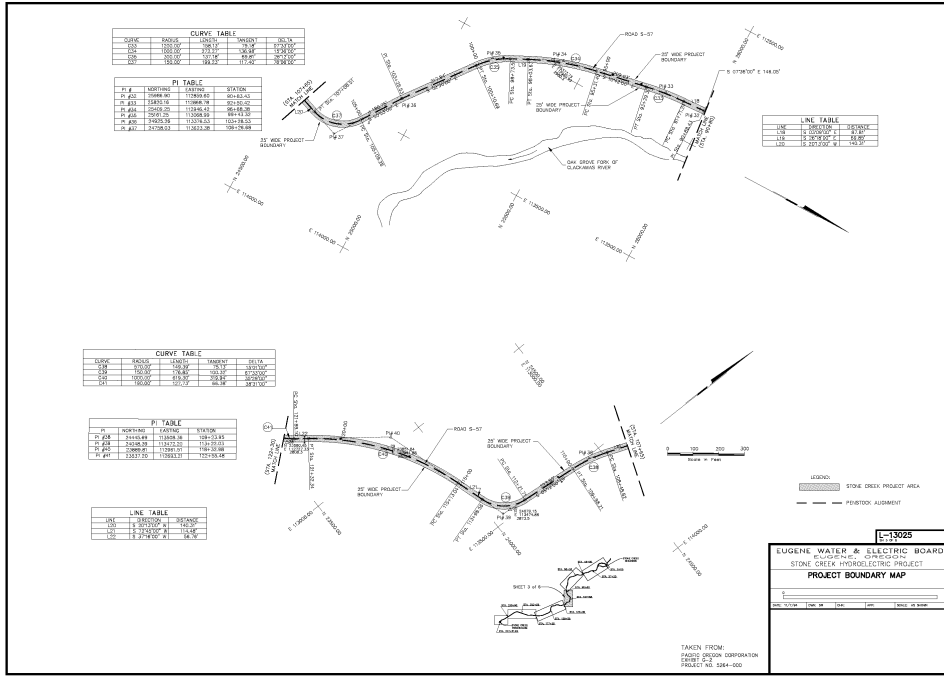


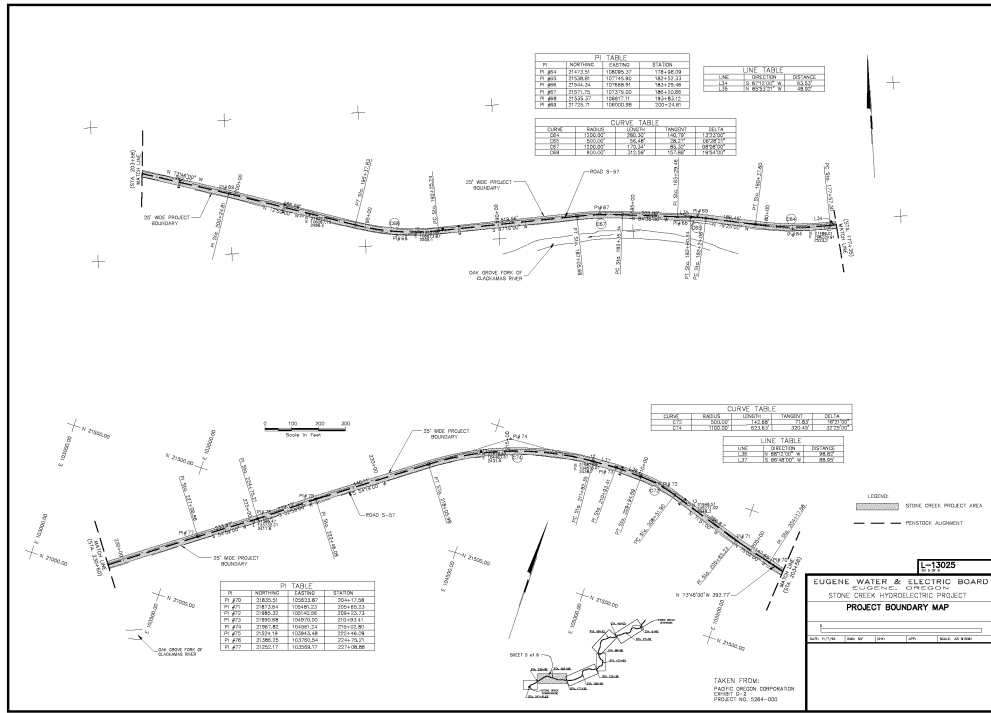
*PLOT INFORMATION
 *WILL NEED TO PLOT ALL VECTOR IMAGES SEPERATE FROM THE RASTOR IMAGE
 *RASTER IMAGE WILL NEED TO BE PLOTTED IN ESP AS A COPYLOT
 *BUT THE VECTOR IMAGES WILL NEED TO PLOTTED IN REGULAR AUTOCAD. (ROTATED 90°)
 *REMEMBER TO TURN THIS LAYER OFF "0" BEFORE PLOTTING THEN TURN IT BACK ON FOR THE NEXT USER.
 *YOU WILL THEN NEED TO CUT & PASTE PLOTS TOGETHER



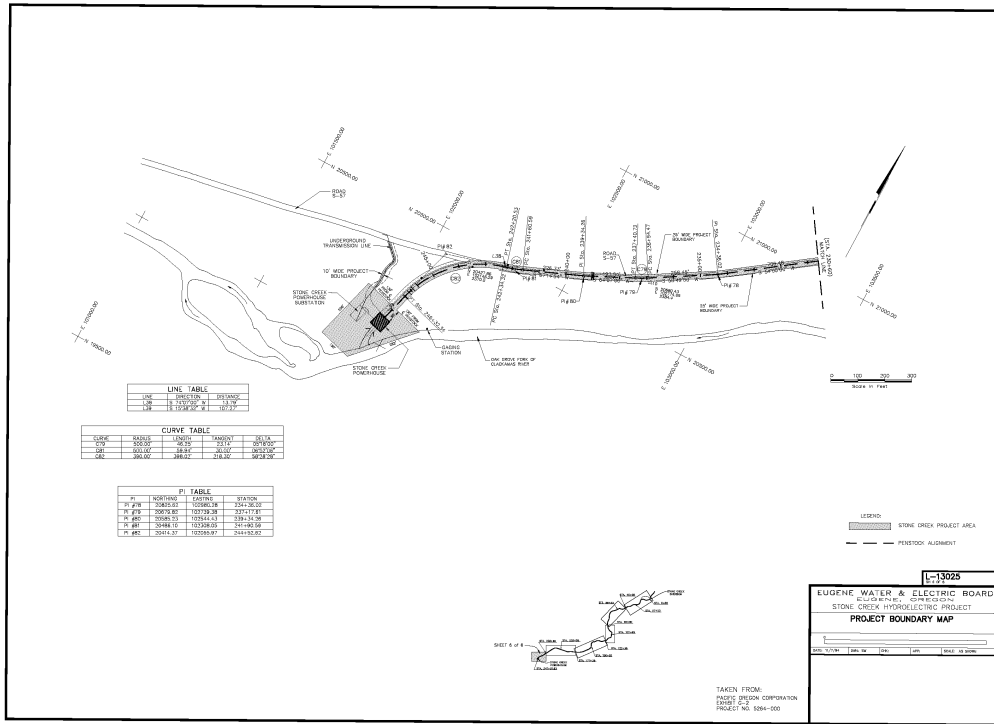


FERC 5264-83





FERC 5284-88



LINE TABLE			
LINE	1	100000	1010000
LINE	2	1010000	1020000

CURVE TABLE			
LINE	1	100000	1010000
LINE	2	1010000	1020000

PI TABLE			
LINE	1	100000	1010000
LINE	2	1010000	1020000

*PLOT INFORMATION
 *WILL NEED TO PLOT ALL VECTOR IMAGES SEPARATE FROM THE RASTER IMAGE
 RASTER IMAGE WILL NEED TO BE PLOTTED IN ESP AS A CO-LOT
 BUT THE VECTOR IMAGES WILL NEED TO BE PLOTTED IN REGULAR AUTOCAD. (ROTATED 90°)
 REMEMBER TO TURN THIS LAYER OFF "0" BEFORE PLOTTING THEN TURN IT BACK ON FOR THE NEXT USER.
 *YOU WILL THEN NEED TO CUT & PASTE PLOTS TOGETHER

TRANSMISSION LINE ROUTING AND PROJECT BOUNDARY	
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LINE	100

EUGENE WATER & ELECTRIC BOARD
 EUGENE, OREGON
 STONE CREEK HYDROELECTRIC PROJECT
 TRANSMISSION LINE ROUTING AND PROJECT BOUNDARY
 SHEET NO. 5284-81

TAKEN FROM:
 PACIFIC DESIGN CORPORATION
 PROJECT NO. 5284-000

EXHIBIT: G SHEET: 1 FERC 5284-81

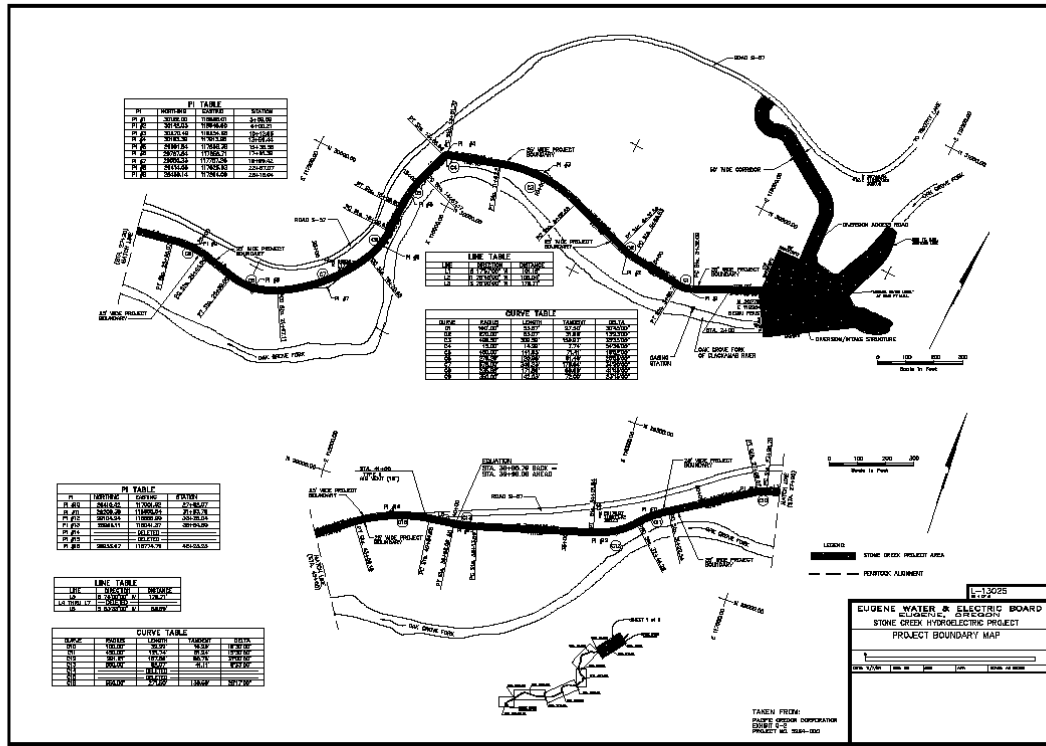


EXHIBIT G SHEET 2 FERC 5284-62

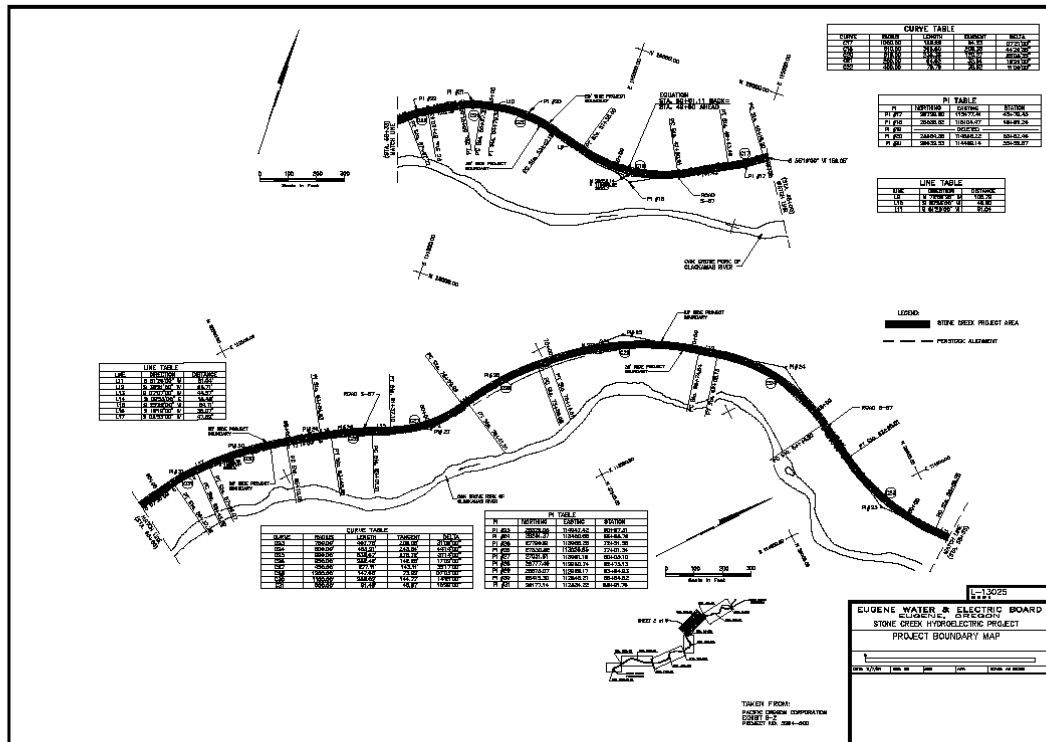


EXHIBIT G SHEET 3 FERC 5284-63

Exhibit H
Project Supplies and Project Tools

- Genie Scissor lift
- Snow Blower
- Portable Generator
- Project tools and rigging
- Spare Parts

Exhibit I
Party Representative Information

Organization	Name / Title	Phone / e-mail
Eugene Water & Electric Board (EWEB) 4200 Roosevelt Boulevard PO Box 10148 Eugene OR 97440-2148	Laddie Arient Primary Operating Committee Member	(541) 685-7452 Office (541) 953-5766 Cell Laddie.Arient@eweb.org
	AJ Morin Operating Committee Member	(541) 685- Office (541) Cell AJMorin@eweb.org
	Mark Zinniker Engineering Supervisor	Mark.zinniker@eweb.org
	Jared Rubin Environmental and Property Supervisor	541-685-7609 / 541-913-2491 (c) jared.rubin@eweb.org
	Patty Boyle Generation Contracts Supervisor	Patty.Boyle@eweb.org 541-685-7406 541-913-7016 (c)
Federal Energy Regulatory Commission (FERC) Aquatic Resources Branch Office of Energy Projects Div. of Hydropower Administration & Compliance (DHAC) 888 1 st Street NE (PJ-12.7) Washington D.C. 20426	Joy Kurtz Aquatic Ecologist	joy.kurtz@ferc.gov 202-502-6760
Oregon Department of Fish and Wildlife (ODFW) 17330 SE Evelyn St. Clackamas, OR 97015	John Zauner Hydropower Coordinator	john.r.zauner@state.or.us 971-673-6041 971-673-6074 (f)
U.S. Forest Service (USFS) Mt. Hood National Forest Clackamas Ranger District 595 NW Industrial Way Estacada. OR 97023	Jack Williamson Fish Biologist	jdwilliamson@fs.fed.us 503-630-8798 / 503-630-8801
	Jane Dalgliesh Supervisory Fish Biologist	503-630-8798 / 503-630-2299 (f) jdalgliesh@fs.fed.us

<p>U.S. Fish and Wildlife Service (USFWS) Oregon Fish and Wildlife Office 2600 SE 98th Ave., Suite 100 Portland, OR 97266</p>	<p>Ann Gray Fish and Wildlife Biologist</p>	<p>ann_e_gray@fws.gov 503-231-6909 (d) / 503-231-6179 (o) / 503-231-6195 (f)</p>
<p>Oregon Water Resources Department (OWRD) 725 Summer St. NE, Suite A Salem, OR 97301</p>	<p>Mary Grainey Hydroelectric Program Coordinator</p>	<p>mary.s.grainey@state.or.us 503-986-0833 / 503-986-0901 (f)</p>
<p>Energy Northwest 3000 George Washington Way, Richland, WA 99352</p>	<p>Scott Urban, O&M Professional Services Manager Kristine Cavanah, Project Specialist Sherri Schwartz, Procurement Specialist</p>	<p>sjurban@energy-northwest.com (509) 377-4453 kdcavanah@energy-northeast.com (509) 377-4225 slschwartz@energy-northwest.com (509)372-5072</p>

Exhibit J Travel Expenses

A TRAVEL EXPENSES

Travel costs will be reimbursable as outlined below.

Travel Time Costs: EWEB shall reimburse for travel time from EN work site to EWEB's work site (Portal to Portal) at straight time hourly rates.

Meals & Incidentals (M&I): Meal and Incidental expenses are only paid when traveling more than 100 miles each way from point of origin to the designated site. Weekend stay-over(s) are paid when continued work is required during the following week.

Travel In/Out (Meals & Incidentals): For eligible personnel, EWEB allows payment of up to 75% of the Federal Per Diem rate for M&I in the County where the service is performed.

Privately Owned Vehicle (POV): Energy Northwest must provide POV mileage (beginning and ending addresses) and any other support documentation as EWEB may require for reimbursement. POV mileage shall be reimbursed at the General Services Administration (GSA) mileage rate for privately owned vehicles in effect at the time of travel. Appropriate insurance coverage should be included in the insurance policies.

Rental car: Every effort shall be made to plan required travel to obtain the lowest rates available. Rental car (compact or mid-size) shall be able to transport 1 to 3 personnel directly engaged in performance of the Work. EWEB will only reimburse for one rental car per three Energy Northwest personnel. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by EWEB. Appropriate insurance coverage should be included in the Contractor's insurance policies. Actual receipts must document all car rental and fuel costs.

Lodging: Every effort shall be made to plan required travel to obtain the lowest rates available. Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the General Services Administration (GSA) rate for the location where the work is being performed. If Energy Northwest employee moves from hotel lodging into residential accommodations earlier than 30 days, the lodging rate will be reduced to \$35/day effective date of establishing residential accommodations. Actual receipts must document all lodging costs being invoiced under this Contract.

Air Travel: Every effort shall be made to plan required travel to obtain the lowest fares available. Air travel (at coach class or equivalent), airport shuttles, parking, etc. billed at cost. Actual receipts must document all air travel costs being invoiced under this Contract.

Other Expenses: Energy Northwest shall submit to the Technical Representative for prior written approval, all proposed "Other" purchases. All other expenses will be based on actual costs and include appropriate documentation. Actual receipts must document all "other expenses" being invoiced under this Contract.

B NON-REIMBURSABLE COSTS

- A. Non-reimbursable costs include charges for entertainment, first-class airfare, bidding and proposal costs, contributions, personal telephone charges, alcoholic beverages, expenses for

transportation for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the provisions of this Contract.

- B. EWEB will not reimburse travel expenses, nor per diem for non-job related absences e.g. sick time, vacation or personal time.
- C. Home visits for less than four (4) consecutive weeks of assignment (on travel status) are not authorized.

Restrictions: EWEB will not pay travel expenses, hourly rates or per diem for non-job related absences (e.g. sick time, vacation time or for non-job related absences).

Exhibit K
Project Drawings

The following drawings are provided as an attachment to the Agreement

- D-13018
- D-13022-32
- D-13018-30B