

# ENERGY NORTHWEST

## CO-LOCATION AGREEMENT

### NUMBER **X-40489**

#### 1.0 Parties

This Co-Location Agreement, hereinafter referred to as the "CLA," is entered into between Energy Northwest, a joint operating agency and municipal corporation in the State of Washington, acting by and through its Business Development Fund, hereinafter referred to as "Energy Northwest," and the U.S. Department of Energy ("DOE"), Richland Operations Office, hereinafter referred to as "Customer," with its principal place of business being the Federal Bldg: 825 Jadwin Ave., Richland, WA 99352; mailing address: P.o. Box 550, Mail stop A245, Richland, WA 99352.

#### 2.0 Incorporation By Agreement

The following documents, and the terms, covenants and conditions therein, are hereby incorporated into this CLA by reference, and which are attached hereto, shall be binding and fully enforceable on the parties: (a) DOE License, hereinafter "License," Contract Number, R006-09L1-14949, dated July 23, 2009; and (b) Memorandum of Agreement Governing The Combined Consolidated Communication Facility ("CCCF"), hereinafter "MOA," dated September 14, 2009.

#### 3.0 Premises

The term "Premises" means the parcel legally described in Exhibit A of the License, including the CCCF, pre-existing communication tower, communication tower built/to-be-built pursuant to the License and the utility corridor described therein.

#### 4.0 Co-Location Space

Energy Northwest hereby permits Customer and Customer's Subtenants to utilize a portion of the Premises designated as the "Co-Location Space," see Exhibit A. The Co-Location Space is the area within the CCCF assigned to Customer and Customer's Subtenants by Energy Northwest, including: (a) rack space, and the square footage corresponding thereto, as assigned by Energy Northwest; (b) the tower(s); and (c) the utility corridor. Customer and Customer's Subtenants are authorized to use the CoLocation Space solely for the purposes set out in the License and MOA.

#### 5.0 Customer's **Subtenants**

Customer's Subtenants are identified as certain entities which, by and through Customer, have a right to utilize the Co-Location Space: (a) Pacific Northwest National Laboratory (PNNL) Seismic; (b) PNNL Weather; (c) DOE Groundwater (CHPRC); (d) DOE Operations & Maintenance (Lockheed Martin); (e) DOE Safeguards and Security (Lockheed Martin); and (f) DOE Support Services (Columbia Communications). Any additional subtenants must be approved in advance by Energy Northwest. Such approval will not be unreasonably withheld. However, a change from one contractor to another

contractor for a pre-authorized activity (e.g., DOE Groundwater) shall not require approval by Energy Northwest, but will require Customer to provide Energy Northwest with thirty (30) days written notice before the changeover. Customer is required to limit the access of Customer's Subtenants to the Co-Location Space and to ensure that Customer's Subtenants comply with Energy Northwest's requirements regarding access and security.

## 6.0 CCCF Common Services

The Parties acknowledge that Customer and Customer's Subtenants provided Energy Northwest with the operating requirements necessary for Energy Northwest to provide common services for the Premises. Energy Northwest covenants that CCCF common services shall be functional as designed based on the operating requirements as provided by Customer and Customer's Subtenants. Energy Northwest acknowledges that Customer, Customer's Subtenants and other CCCF tenants will place reliance on Energy Northwest for proper operation, maintenance and repair of CCCF common services. Energy Northwest covenants that it will use its best efforts to maintain the functionality and operational viability of CCCF common services, including maintenance and repairs, during the term of this CLA, including renewals and extensions hereof. Energy Northwest may conduct routine facility maintenance and inspections of the Premises and Co-Location Space, subject to any limitations and restrictions of the License and MOA. Energy Northwest disclaims all warranties, express or implied or statutory, including but not limited to the installation, description, quality, merchantability, completeness or fitness for any purpose of any portion of the CCCF, or services provided hereunder or described herein.

## 7.0 Cooperation

Energy Northwest and Customer shall co-operate with each other and any CCCF tenants occupying space on the Premises so as to: (a) avoid unreasonably hindering or adversely impacting the business operations of each other and any other CCCF tenants; (b) avoid creating unreasonable radio frequency interference with the transmission operation of all CCCF tenants; and (c) eliminate, minimize and/or determine the cause of any interference of applicable operations. In the event of any interference, the party causing the interference agrees to correct such interference within forty-eight (48) hours of written notice provided by the other party. Should Energy Northwest or Customer be responsible for any interference reported by a CCCF tenant, the responsible party agrees to correct such interference within forty-eight (48) hours of written notice. Energy Northwest will provide Customer with written notice as to any interference reported by other CCCF tenants.

## 8.0 Travel To And From The Premises

Customer acknowledges and understands that, in accordance with Paragraph Eleven (11) of the License, road maintenance is limited to snow and debris removal and necessary repairs- Therefore, Customer is only authorized to use the road at its own risk and assumes all responsibility for travel to and from the CCCF. Additionally, Customer assumes responsibility to impose the aforesaid risk, limitation and responsibility on all of Customer's Subtenants.

## 9.0 Access

Authorized representatives of Customer and Customer's Subtenants shall have unrestricted access to the Co-Location Space at any time, without the need for an escort. An escort shall be required for access to the common services space, with this exception:

in the event that Customer identifies an emergency requiring Customer access to the common services area, Customer may call the Energy Northwest IS Duty Officer who will provide Customer with the combination to the lockbox located in the common area within the CCCF wherein a key to access the common services area is located.



Energy Northwest shall provide, at Energy Northwest's expense, electronic security access to the Co-Location Space, as follows: (a) four (4) authorized individuals designated by Customer; and (b) two (2) authorized individuals designated by each of Customer's Subtenants. Customer and Customer's Subtenants shall pay Energy Northwest ten dollars (\$10) for each electronic access key card over and above four (4) for Customer and two (2) for each of Customer's Subtenants for any replacement cards due to damage or loss.

Customer and Customer's Subtenants are responsible for providing their own security provisions for rack space assigned to them by Energy Northwest. Customer and Customer's Subtenants shall provide Energy Northwest with reasonable access to such areas in case of emergency.

#### 10.0 Term of Use

Customer shall have the right to utilize the Premises at all hours during the period commencing January, 25, 2010 ("Commencement Date") and ending January 24, 2052 ("Termination Date").

#### 11.0 Right of Termination

Each party, in accordance with Paragraphs Thirteen (13) and Fourteen (14) of the License, has a unilateral right of termination by providing two (2) years written notice to the other.

#### 12.0 Costs Billing and Payment

Customer's costs and other obligations described herein are subject to the limitations and restrictions of the License Agreement, MOA and Paragraph Nineteen (19) of this CLA ("19.0 Limitations and Restrictions of Customer's Obligations").

Energy Northwest is responsible for: (a) collecting actual operations and maintenance ("O&M") costs from Customer and Customer's Subtenants, as well as all other CCCF tenants; and (b) determining the O&M chargeback structure/amount. Customer is responsible for Customer's and Customer's Subtenants actual O&M costs attributable, as determined by Energy Northwest, on a per rack basis, subject to Paragraph Nineteen (19) herein.

Energy Northwest is not authorized to charge: (a) capital costs; (b) CCCF depreciation costs; (c) profit or fee from any CCCF tenants, including Customer and Customer's Subtenants; or (d) any other costs which are not O&M costs.

O&M costs are expenses, authorized by the License and MOA, which are necessary for operation, maintenance and repair of the CCCF, including O&M costs for the CoLocation Space and related common services for which Customer and Customer's Subtenants are responsible on a per rack basis. O&M costs include, but are not limited to, DC battery backup, generator backup, HVAC controlled space and power for operations. See: Exhibit

B for Fiscal Year 2011 Provisional Billing Rates. Billing rates may change annually based on actual O&M expenses.

All installations, alterations or improvements made by Customer to its own equipment or to its assigned antenna location shall be at Customer's own expense. Such installations, alterations or improvements shall be accomplished in conformity with plans and specifications approved in advance by Energy Northwest. Such approval shall not be unreasonably withheld.

Energy Northwest shall provide Customer an annual credit/offset correlating with Customer's annual commercial lease fee, as set forth in the MOA. Customer's annual O&M costs will be reduced by such credit/offset for the duration of this CLA, including renewals and extensions hereof.

Invoices shall be submitted quarterly. Invoices shall be payable on a net thirty (30) basis: that is, the entire amount is due and payable within thirty (30) days after Customer's receipt of Energy Northwest's invoice.

### 13.0 Hazardous Waste

In the event that Energy Northwest and/or Customer generates hazardous waste by its own activities on the Premises from and after the Commencement Date of January 25,

2010, the responsible party shall, at its own expense, collect and dispose of any and all such hazardous waste.

### 14.0 Insurance & Damages

Energy Northwest shall maintain a commercial general liability insurance policy with liability limits of \$2 million combined single limit for bodily injury and property damage per occurrence and in the aggregate. Such costs are considered part of the CCCF O&M cost structure and shall be apportioned to tenants in accordance with Exhibit B. Any further liabilities shall be determined in accordance with applicable laws and any claim shall be apportioned in accordance with fault. Customer is self insured and agrees that it shall be responsible for any damage which it has caused. Customer agrees to contractually require each of Customer's Subtenants to be responsible for damage caused by the Subtenant. Therefore, as between Customer and Customer's Subtenants, Customer will be responsible for damage it has caused and each Subtenant will be responsible for damage it has caused. Customer and Customer's subtenants shall only be responsible for damage to the extent a claim exceeds \$2 million, or if there are exclusions or limitations within the general liability policy that precludes coverage of a claim, but only to the extent of their negligence or fault. Upon execution of this CLA, Energy Northwest will furnish Customer with a copy of the commercial general liability insurance policy for review.

### 15.0 Force Maieure

Neither party is responsible for any failure of performance or business interruptions due to any cause(s) beyond such party's reasonable control, including, without limitation, acts of God, fire, explosion, vandalism, cable cuts, adverse weather conditions, governmental action, labor strikes, and supplier failures.

## 16.0 Rules Policies and Procedures

Energy Northwest is vested with authority to prepare rules, policies and procedures regarding the CCCF, but acknowledges and agrees that any such rules, policies and procedures shall not be binding on Customer unless and until such time as the aforesaid rules, policies and procedures have been approved by Customer and a Committee comprised of all CCCF tenants.

## 17.0 Compliance With Applicable Laws

Customer shall comply with all federal, state and local laws applicable to Customer as a permitted user of the Premises under the License, MOA and this CL.A, including, without limitation, laws applicable to the construction, ownership, alteration or operation of the Premises, and will obtain all necessary permits, licenses and similar items at Customer's expense. Customer will comply with all federal, state and local laws applicable to and enforceable against it as a permitted user of the Premises under the License, MOA and this CLA, provided that nothing in this CLA shall be construed as a waiver of sovereign immunity of the government.

## 18.0 Interpretation

The CLA shall be construed and interpreted in accordance with applicable federal and Washington state laws. The CLA shall not be construed and interpreted as an amendment or modification of the License or MOA.

## 19.0 Limitations and Restrictions of Customer's Obligations

The responsibilities of Customer as set forth herein, including the commitment to pay O&M costs and any and all other obligations, are subject to these limitations and restrictions: (a) an analysis of reasonableness such that costs and other obligations which are unreasonable, in the sole determination of Customer, shall not be payable; (b) the availability of appropriated program funds for remediation and/or operation of the Hanford site; and (c) the federal Anti-Deficiency Act.

## 20.0 Assignment

A. Assignment By Energy Northwest. Energy Northwest has advised Customer that it may later wish to transfer the subject CLA to Columbia Generating Station, an entity within Energy Northwest's corporate structure, or another entity within its corporate structure. Energy Northwest is required to seek written approval from Customer for such an intra-corporate assignment, but Customer covenants and agrees that written approval for an intra-corporate assignment will not be unreasonably withheld.

B. Assignment By Customer. Customer may assign the subject CLA to a federal governmental entity without approval from Energy Northwest, but Customer is required to obtain written approval from Energy Northwest for an assignment to a non-federal governmental entity. Energy Northwest covenants and agrees that written approval for a non-federal governmental assignment will not be unreasonably withheld.

## 21.0 Inconsistency

In the event that there is an inconsistency, of any kind or of any nature, between the above-identified License (dated July 23, 2009) and/or MOA (dated September 14, 2009) with this CLA, the License and/or MOA shall control and otherwise take precedence over this CLA.

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IN WITNESS WHERE the parties hereto have duly executed this CLA, in duplicate,  
as of the date set forth herein.

U.S. DEPARTMENT OF ENERGY,  
("DOE")  
RICHLAND OPERATIONS OFFICE

H. Boyd Hathaway

Name H. Boyd Hathaway

Realty officer

Title 71/37/2060

Date

ENERGY NORTHWEST  
**Business Development Fund**

Jerry Paezel

Name Jerry Paezel

Supply Chain Services Mgr

Title

7/27/2010

B

Business Development Fund

Date