



**CONTRACT MODIFICATION 02
X-40477**

Issued by: Jerry G. Paetel

Contractor: Public Utility District No. 1 of Benton County
2721 West 10th, Ave.
Kennewick, WA. 99336

Contract Number: X-40477
Modification Number: 02
Modification Date: May 24th, 2010

CONTRACT PERIOD OF PERFORMANCE

Start Date: December 10, 2009
Est. Completion Date: January 1, 2052

The above completion date, Contract price and all other terms, covenants and conditions of the above referenced Contract, except as duly modified by this and previous amendments, if any, remain in full force and effect.

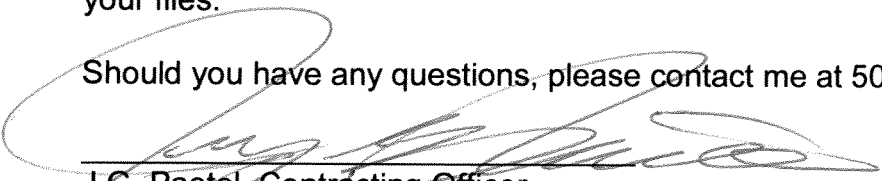
DESCRIPTION OF MODIFICATION No. 2

The subject Contract is herein amended:

- To revise clause 13.0, entitled, Indemnity, incorporating limits of Environmental Insurance provided in clause 14.0.
- To revise clause 14.0, entitled, insurance, subtitle Energy Northwest Environmental Hazards Insurance, clarifying insurance shall be excess to any vehicle policy and including customer and customer's subtenants as insured parties.

Attached are two copies of co-location agreement X-40477 Modification #2. Please sign both copies and return to Energy Northwest. A final executed copy shall be returned for your files.

Should you have any questions, please contact me at 509-372-5145.



J.G. Paetel, Contracting Officer
Energy Northwest
P.O. Box 968
M/D 1040
Richland, WA 99352-0968



**CO-LOCATION AND INDEMNITY AGREEMENT
NUMBER X-40477
Modification 2**

THIS AGREEMENT entered into this 10th day of December, 2009 by and 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 Public Utility District No. 1 of Benton County, Washington with its principal place of business being located at 2721 West 10th Ave, Kennewick, WA 99336, (hereinafter referred to as "Customer" or "Benton PUD") (collectively hereinafter referred to as the "Parties" and independently as the "Party") and in consideration of the mutual promises and covenants herein, the parties agree as follows:

The following documents and the terms, covenants and conditions therein are hereby incorporated into this Agreement by reference and shall be binding and fully enforceable in regards to the Customer and any of its subtenants:

- DOE License, Contract Number, R006-09LI-14949, dated July 23, 2009, all documents referenced therein ("License Agreement"), and Amendments thereto, which is attached hereto.
- Memorandum of Agreement Governing The Combined Consolidated Communication Facility, dated September 14, 2009, ("MOA") and Amendments thereto, which is attached hereto,
- The Facility Transition Plan, documenting tenant facility location and antenna location shall be incorporated upon its completion.
- The Parties do hereby agree, this Agreement inclusive of all documents referenced herein, supersedes all previous Land Use Agreements between Customer and DOE.

1.0 Usage of Property

Energy Northwest shall permit the Customer to utilize certain portions of Energy Northwest property described as follows: Rattlesnake Mountain, Combined Community Communication Facility (RSM CCCF), (hereafter referred to as "Premises"). Specifically, the Customer and Customer's subtenants, (reference attachment A), have a right to utilize area identified as the Benton PUD Bay, the associated square footage and the Tower at the Premises (hereafter referred to as "Co-Location Space"), (reference attachment B) solely for the purposes set forth in Article 2.0. Tower location shall be assigned by Energy Northwest based on the final Transition Plan and the independent study provided by Northwest Tower Engineering, (to be incorporated at a later date). Energy Northwest shall also provide common services to include DC battery backup, generator backup, HVAC controlled space, and power for operations. The permission granted under this Agreement shall not be construed to convey any right, title, or interest in the Premises.

To the extent that this provision is consistent with all other provisions of this Agreement and those Agreements incorporated herein by reference, Customer and Energy Northwest shall co-operate with each other and any third parties occupying space on the Premises so as to not unreasonably hinder or impact the business operations of each other and any third parties who are occupying space on the Premises.

Customer shall not allow new or additional CCCF tenants, over and above such tenants that transitioned into the CCCF in conjunction with the initial relocation, without the written permission of Energy Northwest and DOE per the License Agreement. Customer is granted authority to sublet space or portions thereof to subtenants upon Energy Northwest's written approval, which approval is hereby given as it relates to Customer's subtenants listed in Attachment A, with the proviso: the terms, covenants and conditions of this Agreement shall be binding and fully enforceable with regard to such subtenants. Customer shall ensure that the terms, covenants and conditions of this Agreement are incorporated into any and all contracts and/or subleases that Customer enters into with such subtenants.

2.0 Permitted Uses

Customer is authorized to utilize said Premises for the purposes of locating, operating and maintaining radio equipment for Benton PUD's or its subtenants' use as defined in attachment A and in accordance with applicable laws, regulations and requirements. Said Premises shall be utilized solely for such purpose(s) and for no other purpose. The Co-Location Space constitutes the assignment by Energy Northwest of a floor assignment, rack assignment, or other specification of a location for the installation of personal property, business and trade fixtures and equipment owned or leased by Customer or its subtenants (collectively, the "Equipment") at the Premises. Energy Northwest may change the initial configuration of Customer's and subtenants racks at the Premises with 60 days notice to Customer; provided that such change (i) shall not unreasonably disturb or interfere with Customer's business operations, (ii) shall be performed during a planned service period between midnight and 6:00 am, and (iii) shall be at Energy Northwest's sole cost, except for the co-location fees as indicated in paragraph 6.0, entitled Compensation, Billing and Payment.

3.0 Approval by Energy Northwest

Any installations, alterations, or improvements made by Customer to its own equipment shall be at Customer's own expense and shall be done only at times and in conformity with plans and specifications approved in advance in writing by Energy Northwest, performed by a licensed contractor approved in advance in writing by Energy Northwest, and in accordance with all laws, rules, regulations, ordinances and requirements of governmental agencies, offices and boards having jurisdiction. Customer will pay directly or reimburse Energy Northwest for any cost incurred by Energy Northwest in obtaining said approval(s). If requested by Energy Northwest, Customer will post a bond or other security reasonably satisfactory to Energy Northwest to protect Energy Northwest against liens arising from work performed for Customer. All work performed shall be done in a good worker like manner and with material (when not specifically described in the specifications) of the quality and appearance customary in the trade for first-class construction of the type in which the Co-Location Space is located.

4.0 Restrictions on Use

Customer, at its sole expense, shall cause the Co-Location Space used by Customer and all aspects of its business operations and occupancy of the Co-Location Space used by Customer to be continuously in compliance with all laws, ordinances, and regulations, now or hereinafter enacted concerning the Co-Location Space on the Premises. In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

“Subtenant, at its sole expense, shall cause the Co-Location Space used by Subtenant and all aspects of its business operations and occupancy of the Co-Location Space used by Subtenant to be continuously in compliance with all laws, ordinances, and regulations, now or hereinafter enacted concerning the Co-Location Space on the Premises.”

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement.

Energy Northwest reserves the right, in its reasonable discretion, to enter the Premises at any time if, in its sole discretion, Energy Northwest deems that such action is necessary to protect the property and rights of Energy Northwest and existing and potential customers of Energy Northwest's services.

5.0 Term of Use

Customer shall have the right, at the discretion of Energy Northwest, to utilize the premises at all hours during the period commencing December 10, 2009 (“Commencement Date”) and ending January 1, 2052

6.0 Compensation, Billing and Payment

Customer agrees to pay to Energy Northwest for that portion of the actual and reasonable operations and maintenance (O&M) costs (reference attachment C) entitled Provisional Billing Rates which are attributable to the use by Benton PUD, and its subtenants on a per rack basis. In addition, as provided in attachment C, Customer agrees to allocate the DOE land use charge, hereinafter known as the “Commercial Lease Fee”, to the commercial tenants (as required by Paragraph 6 of the License Agreement) in the sum of \$15,000 for the first year through July 31, 2010, and then \$20,000 for each year thereafter running from August 1 through July 30, or in such other amount as may be required pursuant to the License Agreement in subsequent years. Per the License Agreement, this amount is subject to change. Invoices shall be submitted quarterly, and shall be payable upon presentation. Invoices not paid within thirty (30) days of invoice date may be carried forward to the next invoice date and shall be subject to a carrying charge of one and a half percent (1 ½%) per month. If Customer fails to pay any valid, undisputed invoice within thirty (30) days of the invoice date and such failure continues fifteen (15) days after Energy Northwest gives Customer notice of such failure, Energy Northwest shall have the right to terminate this Agreement immediately. The right to terminate under the terms of this paragraph shall be in addition to all other legal, equitable, or contractual remedies available to Energy Northwest. Remittance will be mailed to Energy Northwest at the address noted on such invoices or as Energy Northwest may otherwise advise. Provided and notwithstanding

any other provision herein to the contrary, Customer shall not be responsible for the financial obligations of its subtenants under this section. Customer shall exercise good faith efforts to collect sums due Energy Northwest from its subtenants, and Customer shall require in its subtenant agreements that subtenants of Customer shall be directly liable to Energy Northwest for their failure to make the payments due under their communications site subtenant agreements with Customer. In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement.

7.0 Termination

The permission granted under this agreement may be terminated at any time, by either party with or without cause, by providing the other party a minimum of twenty-three (23) months notice. Notice of such termination shall be in writing and shall be effective upon Customer or Energy Northwest's receipt of such notice. In the event Energy Northwest is issuing the termination notice, Customer shall be allowed a reasonable time, not to exceed two (2) years, to remove its property from the premises upon termination. All personal property of Customer and Customer's subtenants shall remain the personal property of the Customer and its subtenants.

8.0 Assignment

Customer shall not assign, pledge, transfer, or otherwise convey all or any part of the rights and privileges granted by this Agreement in any manner without prior written consent of Energy Northwest, which consent it will not unreasonably withhold.

9.0 Representations and Warranties

Each Party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. Energy Northwest represents and warrants to Customer that any services provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, ENERGY NORTHWEST MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE FACILITY OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

10.0 Force Majeure

Neither party is liable for any failure of performance if such failure of performance is due to any cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor strikes and supplier failures. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, the other party may terminate the affected portion of the Services.

11.0 Condition of the Premises

Except as specified in this Section 11.0, Energy Northwest makes no express or implied warranty or representation as to the condition of the Premises, or to the suitability of said Premises for the usage outlined above. All facility common services "as designed" shall be fully functional upon execution of this Agreement. Customer agrees that it has inspected said Premises and found them acceptable for its uses as designed.

If Benton PUD fails to notify Energy Northwest of any defects in Energy Northwest's work in completing the building and tower within ten (10) days of delivery of possession to Benton PUD, Benton PUD shall be deemed to have accepted the Premises in their then condition. If Benton PUD discovers any defects in Energy Northwest's work during this 10-day period, Benton PUD shall so notify Energy Northwest in writing and the Commencement Date shall be delayed until after Energy Northwest has corrected the defects and Benton PUD has had five (5) business days to inspect and approve the Premises after Energy Northwest's correction of such defects. The Commencement Date shall not be delayed if Benton PUD's inspection reveals minor defects in Energy Northwest's work that will not prevent Benton PUD or its subtenants from using the Premises for their intended purpose.

12.0 Return of Premises

Customer agrees to return the Premises to the same condition as existed prior to the commencement of the use except for normal wear and tear. Customer shall indemnify Energy Northwest for any damage or injury sustained to the Premises as a result of Customer's usage of said Premises. This indemnification shall not extend to the portion of the Premises used by Customer's subtenants.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

"Subtenant agrees to return the Premises to the same condition as existed prior to the commencement of the use except for normal wear and tear. Subtenant shall indemnify Energy Northwest for any damage or injury sustained to the Premises as a result of Subtenant's usage of said Premises.

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement."

13.0 Indemnity

For and in consideration of the permissive use of the Premises described above, Customer agrees to indemnify, waive, and save harmless Energy Northwest and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or violation or breach of Paragraph 1.0. by Customer, its representatives, agents, invitees, guests or employees, including any and all expense, legal or otherwise, incurred by Energy Northwest or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Energy Northwest or its representatives or up to the limits of the Environmental

Hazards Insurance provided for in Section 14.0. Customer's duty to indemnify does not apply to the negligent act or omission of its subtenants.

Customer agrees that if their current Liability Insurance does not sufficiently cover the operations of the "Premises" a supplement to their agreement shall be obtained to indemnify Energy Northwest. Customers' insurance shall name Energy Northwest as an additional insured to Customer's policy.

Energy Northwest agrees to indemnify, waive, and save harmless Customer and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or violation or breach of Paragraph 1.0. by Energy Northwest, its agents, servants or employees, including any and all expense, legal or otherwise, incurred by Customer or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Customer or its representatives or up to the limits of the Environmental Hazards Insurance provided for in Section 14.0. Energy Northwest's duty to indemnify does not apply to the negligent act or omission of its subtenants.

Except as noted in this paragraph, Energy Northwest shall not be responsible for or have any liabilities for damages suffered by Customer, its agents, officers, employees, invitees or licensees, customers, subcontractors, suppliers, or any other third party in the event a problem occurs with the operations of the "Premises" and/or any problem which results in failure in operations of these facilities. Such damages shall include, but not be limited to: violation of any third party intellectual property rights; loss or restoration of data or financial loss as a result of failure of operations, and all claims of any kind by Customers' end users. In the event of Energy Northwest's unlawful or willful misconduct in operating the Premises or facilities, Energy Northwest's liability shall be limited to damages caused to Customer's physical assets located on the Premises. Provided in no event shall Energy Northwest be liable to Customer, its agents, officers, employees, invitees or licensees, customers, subcontractors, suppliers or any other third party for damages for loss of use.

For the purpose of fulfilling this indemnity obligation, each Party agrees that this indemnity agreement shall apply to, but not be limited to, actions brought by its own employees against the other Party; i.e., for the purposes of suits brought against a Party ("sued Party") by the other Party's own injured employee ("employing Party"), the employing Party waives its immunity rights or protections created by the Worker's Compensation Act solely for the purpose of indemnifying the sued Party for the employing Party's own injured employee. The Parties agree that for actions brought by a Party's employee where the employee is solely suing its employer, the employing Party has not waived its Worker's Compensation Act and/or Industrial Insurance Act immunity rights or protections. **THE PARTIES HEREBY ACKNOWLEDGE THIS PROVISION WAS MUTUALLY AGREED TO BY BOTH PARTIES.**

As used in this provision, the phrase "any and all expense" includes, but is not limited to, claims, suits, judgments or proceedings for services, taxes, labor performed, materials furnished, provisions, supplies, board and room, liens, medical expenses, pain and suffering, bodily injury, death, loss of earnings, loss of consortium, garnishments,

court costs and attorney fees (including those required to seek enforcement of this agreement), and other costs of defense.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place the following indemnification requirement:

“For and in consideration of the permissive use of the Premises, subtenant agrees to indemnify, waive, and save harmless Energy Northwest and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or usage of the property by subtenant, its representatives, agents, invitees, guests or employees, including any and all expense, legal or otherwise, incurred by Energy Northwest or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Energy Northwest or its representatives or up to the limits of the Environmental Hazards Insurance provided for in Section 14.0 of the Energy Northwest Agreement.”

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution.

14.0 Insurance

The Customer shall, at Customer's expense, maintain its membership in PURMS Joint Self-Insurance Agreement (“PURMS Agreement”), or a commercial general liability insurance policy with an insurer acceptable to Energy Northwest, insuring against any and all claims for injury to or death of persons and loss of or damage to property occurring upon, in or about the Premises arising from an act or omission of the Customer or any of its agents, employees, and representatives. Such agreement or insurance shall have liability limits of \$2 million combined single limit for bodily injury and property damage per occurrence and in the aggregate.

Customer shall require its subtenants to carry commercial general liability insurance coverage or show proof of self-insurance with the same requirements and limits as provided herein and name Energy Northwest as an additional insured on the policy.

Customer or Customer's PURMS or insurer or Customer's Subtenant, or its insurer shall have the option to perform any required environmental remediation, or to pay for or reimburse the costs of any required environmental remediation to the satisfaction of Energy Northwest, Energy Northwest's insurer and the responsible regulatory authorities.

All insurance or PURMS Agreement required above shall be primary insurance as respects the Energy Northwest for any and all covered Customer's liabilities arising from an act or omission of the Customer or any of its agents, contractors, representatives, licensees or invitees. Any such insurance maintained by Energy Northwest shall be excess of Customer's insurance and shall not contribute to it. The liability of Customer and any of its insures shall not be reduced, offset, or otherwise affected by the existence and/or collectability of any insurance maintained by Energy Northwest and;

- Shall contain a provision whereby the carrier agrees not to cancel or significantly modify the insurance without thirty (30) days prior written notice to the Energy Northwest; and
- Shall name the Energy Northwest as additional insured and
- Shall not contain a severability of interest's exclusion.
- Shall contain a waiver of subrogation clause.

Customer agrees that if their current liability insurance or the PURMS Agreement does not sufficiently cover the operations of the "Premises" a supplement to their agreement or insurance shall be obtained to indemnify Energy Northwest. Customer's insurance or the PURMS Agreement shall name Energy Northwest as an additional insured to Customer's policy, or agreement.

The Parties understand that the comparative fault laws of the State of Washington will bind them.

On or before Benton PUD taking possession of the Premises pursuant to this Co-location Agreement, each party shall provide to the other a copy of the insurance policies, agreement, or certificates evidencing the aforesaid insurance coverage required above. Any commercial insurance shall be with underwriters acceptable to the Energy Northwest, such acceptance by Energy Northwest not to be unreasonably withheld. Renewal certificates and any changes in terms or underwriter shall be furnished to Energy Northwest for approval at least thirty (30) days prior to the expiration date of each policy for which a certificate was theretofore furnished.

Customer Property Insurance

The Parties understand that Lessee assumes all responsibility for loss to its personal property and leasehold improvements and alterations on the Premises, and Customer's loss of income due to fire on the Premises. Energy Northwest is in no way responsible for insuring, replacing, or repairing Customer's personal property, leasehold improvements and alterations, or loss of income, except for loss to Customer's personal property as a direct result of Energy Northwest's negligent acts, errors or omissions.

Energy Northwest Property Insurance

Energy Northwest shall, at Energy Northwest's expense, maintain for RSM CCCF a Commercial Property Policy including a Causes of Loss - Special Form, in an amount of the replacement value of the facility and permanently installed fixtures and equipment. All proceeds of any such insurance shall be payable to Energy Northwest and shall be applied to the restoration of the Premises. Any proceeds of such insurance remaining after such restoration shall belong to Energy Northwest.

Energy Northwest Environmental Hazards Insurance

Energy Northwest will maintain Environmental Hazards Insurance for accidental spills or releases at the RSM CCCF and name Customer and Customer's Subtenants as insured parties under this policy. Such insurance shall be excess to any insurance coverage provided under any applicable automobile or motor vehicle policies. By providing this insurance, Energy Northwest is in no way accepting or relieving the liability of such an event caused by Customer, its Subtenants, and any of the Customer's or Subtenants' representatives, agents, invitees, guests or employees.

Except for payment up to the Limits of the Environmental Hazards Insurance described above, the liability of the Customer, any subtenants, and any of its insureds shall not be reduced, offset, or otherwise affected by the existence and/or collectability of any insurance maintained by Energy Northwest that is not a covered loss or claim under the Environmental Hazards Insurance described above, and;

Customer as it relates to its use of the Premises shall implement best management practices to prevent unplanned releases of hazardous substances (as defined by CERCLA Section 102, SARA Title III, and/or Section 112(r) of the CAA), including oil, or dangerous waste (as defined by WAC-173-303) to the environment. In the event of an unplanned release caused by Customer, Customer or Customer's Subtenant shall take steps to mitigate the extent and severity of the release and protect the environment. Customer shall immediately report to Energy Northwest any unplanned release occurring on the RSM CCCF Site by Customer or upon notification by Customer's Subtenant.

This immediate verbal report shall contain the following information:

- (1) Name, address, telephone number of the point of contact for Customer;
- (2) Location at which the release occurs;
- (3) Name and quantity of material(s) involved;
- (4) The extent of injuries, if any;
- (5) An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- (6) Estimated quantity of released material that resulted from the incident; and
- (7) Actions which have been undertaken to mitigate the occurrence.

The verbal notification shall be followed by a written report containing the same information within 5 working days of the event.

By January 31 of each year, Customer will provide Energy Northwest with an inventory of hazardous substances Customer has caused to be on the Premises to include chemical name, CAS number, container description, and amount in pounds.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

"Subtenant shall implement best management practices to prevent unplanned releases of hazardous substances (as defined by CERCLA Section 102, SARA Title III, and/or Section 112(r) of the CAA), including oil, or dangerous waste (as defined by WAC-173-303) to the environment. In the event of an unplanned release caused by Subtenant, Subtenant shall take steps to mitigate the extent and severity of the release and protect the environment. Subtenant shall immediately report to Benton PUD and Energy Northwest any unplanned release occurring on the RSM CCCF Site.

This immediate verbal report shall contain the following information:

- (1) Name, address, telephone number of the point of contact for Subtenant;
- (2) Location at which the release occurs;
- (3) Name and quantity of material(s) involved;
- (4) The extent of injuries, if any;

- (5) An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- (6) Estimated quantity of released material that resulted from the incident; and
- (7) Actions which have been undertaken to mitigate the occurrence.

The verbal notification shall be followed by a written report containing the same information within 5 working days of the event.

By January 31 of each year, Subtenant will provide Benton PUD and Energy Northwest with an inventory of hazardous substances Subtenant has caused to be on the Premises to include chemical name, CAS number, container description, and amount in pounds."

15.0 Environmental, Health and Safety

The Customer shall be solely responsible for all Customer activities conducted within RSM CCCF to ensure that such activities are, on an on-going basis, in compliance with the environmental/regulatory requirements of the Environmental Protection Agency or the Washington State Department of Ecology, the health and safety requirements of OSHA, WSHA, the City of Richland and Benton County, and with any environmental or personnel health and safety requirements that may be established and communicated in writing by RSM CCCF management.

Customer agrees to collect and dispose of any and all hazardous waste generated by his or her activities at RSM CCCF in compliance with local, state, and federal laws and regulations.

16.0 Assumption of Risk

To the extent permitted by law, the Customer assumes all risk of injury to persons or damage to property occurring in or about the Premises as a result of Customer's use or occupancy of the Premises (unless caused by the negligent act, error or omission of Energy Northwest, its employees or agents), the negligence or willful misconduct of Customer, its agents, officers, representatives, employees, invitees or guests, or as a result of Customer's failure to perform or abide by any of the covenants or conditions of this Agreement. The Customer shall reimburse Energy Northwest for any costs or expenses, including attorney's fees, which Energy Northwest may incur in defending any such claim.

Energy Northwest shall not be responsible for any injuries or damages incurred by Customer, its agents, officers, employees, invitees or licensees arising from acts or omissions of any subtenants or from any cause other than the negligence or willful misconduct of Energy Northwest or its employees.

17.0 Security

Customer, and their respective employees, agents, invitees and licensees agree to comply with all security regulations and procedures established by Energy Northwest for the facility. Energy Northwest shall provide up to two (2) Customer employees and up to two (2) of Customers subtenants employees, and such other individuals designated by Customer, and agreed to by Energy Northwest, with electronic security access to the facility, including common use areas. Customer shall pay Energy Northwest ten dollars (\$10) for each electronic access key card or for replacements thereof due to damage or loss.

Customer shall provide and maintain at its sole expense its own security provisions specific to portions of the Customer Premises for which Customer security requirements exceed facility security provisions provided by Energy Northwest. Customer shall provide Energy Northwest reasonable access to such Customer secured areas in case of emergency, and to provide Energy Northwest with reasonable assurance that Customer remains in compliance with the terms and conditions of this Agreement, and to conduct routine facility maintenance and inspections in accordance with the terms and conditions of this Agreement.

Note: DOE site specific access rules for the site access road, gate 106 on the main road (US Department of Energy Res. RD) leading to RSM CCCF site and 2nd security gate to the site will be added when finalized.

18.0 Site Access Customer acknowledges and understands that in accordance with paragraph 11 of the DOE License incorporated herein, that road maintenance is limited to snow and debris removal, and necessary repairs so that Customer and Customer subtenants can utilize the road at their own risk for travel to and from the CCCF as required to sustain radio operation of their systems.

19.0 Site Rules Customer represents that its employees, representatives, invitees and agents will abide by all Energy Northwest rules and regulations while on the Premises.

20.0 Interference with Communications Customer and Energy Northwest shall cooperate with each other and any third parties occupying space on the Premises so as to: (1) not create unreasonable radio frequency interference with the transmission operations with each other and any third parties occupying space on the Premises; (2) minimize and/or determine the cause of interference between their respective operations on the premises. In the event such interference occurs, the party causing the interference agrees to correct such interference within 48 hours of written notice by Energy Northwest or cease use of its facilities.

Any subtenant agreements entered into by Benton PUD which permits the installation of telecommunications equipment on the Premises shall include the following provision: "Customer agrees to operate its transmission equipment so as to not create unreasonable radio frequency interference with the transmission operations of any third party occupying space on the Premises. In the event such interference is caused by tenant, tenant agrees to correct such interference within 48 hours of written notice by Energy Northwest or cease use of its facilities."

21.0 Interpretation The agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

22.0 Entire Agreement This agreement and any addenda, attachments, exhibits, and other documents incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersede all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth, no amendment to this Agreement shall be valid unless in writing and signed by both Parties.

23.0 Notices For purposes of this Agreement, notices as required hereunder or otherwise desired by the Customer shall be forwarded to Energy Northwest's representative:

Jacque Fuller, Telecommunications Supervisor
Energy Northwest
PO Box 968 MD 1032
Richland, WA 99352
509.377.8757

Notices as required hereunder or otherwise desired by Energy Northwest shall be forwarded to Customer's representative:

Stephen B. Hunter, Director of Operations
Benton PUD
PO Box 6270
Kennewick, WA 99336
509.582.1237

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, in duplicate, as of the date first written above.

**PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY, WASHINGTON**

Chad G. Garton
Name

ASST GENERAL MANAGER
Title

6/14/10
Date

**ENERGY NORTHWEST
Business Development Fund**

Richard Shays
Name

Supervisor, Purchasing/Contracts
Title

6/23/10
Date



CONTRACT MODIFICATION 01
X-40477

Issued by: Jerry G. Paetel
Contractor: Public Utility District No. 1 of Benton County
2721 West 10th, Ave.
Kennewick, Wa. 99336

Contract Number: X-40477
Modification Number: 01
Modification Date: April 13, 2010

CONTRACT PERIOD OF PERFORMANCE

Start Date: December 10, 2009
Est. Completion Date: January 1, 2012

The above completion date, Contract price and all other terms, covenants and conditions of the above referenced Contract, except as duly modified by this and previous amendments, if any, remain in full force and effect.

DESCRIPTION OF MODIFICATION No. 1

The subject Contract is herein amended:

- To revised clause 14.0, entitled, Insurance, incorporating changes in requirements for environmental insurance (attached), and;
- Replace Attachment C, entitled, 1st Year CCCF O&M Estimated Total Costs, (attached)

PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY, WASHINGTON

Signature: Chad B. Sanders, Asst. Genl. Mgr for
Name: James W. Sanders
Title: General Manager
Date: April 13, 2010 4/15/10 JWS

Energy Northwest

Signature: Richard Skiff
Name: Richard Skiff
Title: Supervisor, Purchasing Contracts
Date: 5/24/10



CO-LOCATION AND INDEMNITY AGREEMENT NUMBER X-40477

THIS AGREEMENT entered into this 10th day of December, 2009 by and 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 Public Utility District No. 1 of Benton County, Washington with its principal place of business being located at 2721 West 10th Ave, Kennewick, WA 99336, (hereinafter referred to as "Customer" or "Benton PUD") (collectively hereinafter referred to as the "Parties" and independently as the "Party") and in consideration of the mutual promises and covenants herein, the parties agree as follows:

The following documents and the terms, covenants and conditions therein are hereby incorporated into this Agreement by reference and shall be binding and fully enforceable in regards to the Customer and any of its subtenants:

- DOE License, Contract Number, R006-09LI-14949, dated July 23, 2009, all documents referenced therein ("License Agreement"), and Amendments thereto, which is attached hereto.
- Memorandum of Agreement Governing The Combined Consolidated Communication Facility, dated September 14, 2009, ("MOA") and Amendments thereto, which is attached hereto,
- The Facility Transition Plan, documenting tenant facility location and antenna location shall be incorporated upon its completion.
- The Parties do hereby agree, this Agreement inclusive of all documents referenced herein, supersedes all previous Land Use Agreements between Customer and DOE.

1.0 Usage of Property

Energy Northwest shall permit the Customer to utilize certain portions of Energy Northwest property described as follows: Rattlesnake Mountain, Combined Community Communication Facility (RSM CCCF), (hereafter referred to as "Premises"). Specifically, the Customer and Customer's subtenants, (reference attachment A), have a right to utilize area identified as the Benton PUD Bay, the associated square footage and the Tower at the Premises (hereafter referred to as "Co-Location Space"), (reference attachment B) solely for the purposes set forth in Article 2.0. Tower location shall be assigned by Energy Northwest based on the final Transition Plan and the independent study provided by Northwest Tower Engineering, (to be incorporated at a later date). Energy Northwest shall also provide common services to include DC battery backup, generator backup, HVAC controlled space, and power for operations. The permission granted under this Agreement shall not be construed to convey any right, title, or interest in the Premises.

To the extent that this provision is consistent with all other provisions of this Agreement and those Agreements incorporated herein by reference, Customer and Energy Northwest shall co-operate with each other and any third parties occupying space on

the Premises so as to not unreasonably hinder or impact the business operations of each other and any third parties who are occupying space on the Premises.

Customer shall not allow new or additional CCCF tenants, over and above such tenants that transitioned into the CCCF in conjunction with the initial relocation, without the written permission of Energy Northwest and DOE per the License Agreement. Customer is granted authority to sublet space or portions thereof to subtenants upon Energy Northwest's written approval, which approval is hereby given as it relates to Customer's subtenants listed in Attachment A, with the proviso: the terms, covenants and conditions of this Agreement shall be binding and fully enforceable with regard to such subtenants. Customer shall ensure that the terms, covenants and conditions of this Agreement are incorporated into any and all contracts and/or subleases that Customer enters into with such subtenants.

2.0 Permitted Uses

Customer is authorized to utilize said Premises for the purposes of locating, operating and maintaining radio equipment for Benton PUD's or its subtenants' use as defined in attachment A and in accordance with applicable laws, regulations and requirements. Said Premises shall be utilized solely for such purpose(s) and for no other purpose. The Co-Location Space constitutes the assignment by Energy Northwest of a floor assignment, rack assignment, or other specification of a location for the installation of personal property, business and trade fixtures and equipment owned or leased by Customer or its subtenants (collectively, the "Equipment") at the Premises. Energy Northwest may change the initial configuration of Customer's and subtenants racks at the Premises with 60 days notice to Customer; provided that such change (i) shall not unreasonably disturb or interfere with Customer's business operations, (ii) shall be performed during a planned service period between midnight and 6:00 am, and (iii) shall be at Energy Northwest's sole cost, except for the co-location fees as indicated in paragraph 6.0, entitled Compensation, Billing and Payment.

3.0 Approval by Energy Northwest

Any installations, alterations, or improvements made by Customer to its own equipment shall be at Customer's own expense and shall be done only at times and in conformity with plans and specifications approved in advance in writing by Energy Northwest, performed by a licensed contractor approved in advance in writing by Energy Northwest, and in accordance with all laws, rules, regulations, ordinances and requirements of governmental agencies, offices and boards having jurisdiction. Customer will pay directly or reimburse Energy Northwest for any cost incurred by Energy Northwest in obtaining said approval(s). If requested by Energy Northwest, Customer will post a bond or other security reasonably satisfactory to Energy Northwest to protect Energy Northwest against liens arising from work performed for Customer. All work performed shall be done in a good worker like manner and with material (when not specifically described in the specifications) of the quality and appearance customary in the trade for first-class construction of the type in which the Co-Location Space is located.

4.0 Restrictions on Use

Customer, at its sole expense, shall cause the Co-Location Space used by Customer and all aspects of its business operations and occupancy of the Co-Location Space used by Customer to be continuously in compliance with all laws, ordinances, and regulations, now or hereinafter enacted concerning the Co-Location Space on the

Premises. In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

"Subtenant, at its sole expense, shall cause the Co-Location Space used by Subtenant and all aspects of its business operations and occupancy of the Co-Location Space used by Subtenant to be continuously in compliance with all laws, ordinances, and regulations, now or hereinafter enacted concerning the Co-Location Space on the Premises."

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement.

Energy Northwest reserves the right, in its reasonable discretion, to enter the Premises at any time if, in its sole discretion, Energy Northwest deems that such action is necessary to protect the property and rights of Energy Northwest and existing and potential customers of Energy Northwest's services.

5.0 Term of Use

Customer shall have the right, at the discretion of Energy Northwest, to utilize the premises at all hours during the period commencing December 10, 2009 ("Commencement Date") and ending January 1, 2052

6.0 Compensation, Billing and Payment

Customer agrees to pay to Energy Northwest for that portion of the actual and reasonable operations and maintenance (O&M) costs (reference attachment C) entitled Provisional Billing Rates which are attributable to the use by Benton PUD, and its subtenants on a per rack basis. In addition, as provided in attachment C, Customer agrees to allocate the DOE land use charge, hereinafter known as the "Commercial Lease Fee", to the commercial tenants (as required by Paragraph 6 of the License Agreement) in the sum of \$15,000 for the first year through July 31, 2010, and then \$20,000 for each year thereafter running from August 1 through July 30, or in such other amount as may be required pursuant to the License Agreement in subsequent years. Per the License Agreement, this amount is subject to change. Invoices shall be submitted quarterly, and shall be payable upon presentation. Invoices not paid within thirty (30) days of invoice date may be carried forward to the next invoice date and shall be subject to a carrying charge of one and a half percent (1 ½%) per month. If Customer fails to pay any valid, undisputed invoice within thirty (30) days of the invoice date and such failure continues fifteen (15) days after Energy Northwest gives Customer notice of such failure, Energy Northwest shall have the right to terminate this Agreement immediately. The right to terminate under the terms of this paragraph shall be in addition to all other legal, equitable, or contractual remedies available to Energy Northwest. Remittance will be mailed to Energy Northwest at the address noted on such invoices or as Energy Northwest may otherwise advise. Provided and notwithstanding any other provision herein to the contrary, Customer shall not be responsible for the financial obligations of its subtenants under this section. Customer shall exercise good faith efforts to collect sums due Energy Northwest from its subtenants, and Customer shall require in its subtenant agreements that subtenants of Customer shall be directly liable to Energy Northwest for their failure to make the payments due under their communications site subtenant agreements with Customer. In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement,

Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement.

7.0 Termination

The permission granted under this agreement may be terminated at any time, by either party with or without cause, by providing the other party a minimum of twenty-three (23) months notice. Notice of such termination shall be in writing and shall be effective upon Customer or Energy Northwest's receipt of such notice. In the event Energy Northwest is issuing the termination notice, Customer shall be allowed a reasonable time, not to exceed two (2) years, to remove its property from the premises upon termination. All personal property of Customer and Customer's subtenants shall remain the personal property of the Customer and its subtenants.

8.0 Assignment

Customer shall not assign, pledge, transfer, or otherwise convey all or any part of the rights and privileges granted by this Agreement in any manner without prior written consent of Energy Northwest, which consent it will not unreasonably withhold.

9.0 Representations and Warranties

Each Party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. Energy Northwest represents and warrants to Customer that any services provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, ENERGY NORTHWEST MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE FACILITY OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

10.0 Force Majeure

Neither party is liable for any failure of performance if such failure of performance is due to any cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor strikes and supplier failures. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, the other party may terminate the affected portion of the Services.

11.0 Condition of the Premises

Except as specified in this Section 11.0, Energy Northwest makes no express or implied warranty or representation as to the condition of the Premises, or to the suitability of said Premises for the usage outlined above. All facility common services "as designed" shall be fully functional upon execution of this Agreement. Customer agrees that it has inspected said Premises and found them acceptable for its uses as designed.

If Benton PUD fails to notify Energy Northwest of any defects in Energy Northwest's work in completing the building and tower within ten (10) days of delivery of possession to Benton PUD, Benton PUD shall be deemed to have accepted the Premises in their then condition. If Benton PUD discovers any defects in Energy Northwest's work during this 10-day period, Benton PUD shall so notify Energy Northwest in writing and the

Commencement Date shall be delayed until after Energy Northwest has corrected the defects and Benton PUD has had five (5) business days to inspect and approve the Premises after Energy Northwest's correction of such defects. The Commencement Date shall not be delayed if Benton PUD's inspection reveals minor defects in Energy Northwest's work that will not prevent Benton PUD or its subtenants from using the Premises for their intended purpose.

12.0 Return of Premises

Customer agrees to return the Premises to the same condition as existed prior to the commencement of the use except for normal wear and tear. Customer shall indemnify Energy Northwest for any damage or injury sustained to the Premises as a result of Customer's usage of said Premises. This indemnification shall not extend to the portion of the Premises used by Customer's subtenants.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

"Subtenant agrees to return the Premises to the same condition as existed prior to the commencement of the use except for normal wear and tear. Subtenant shall indemnify Energy Northwest for any damage or injury sustained to the Premises as a result of Subtenant's usage of said Premises.

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution, up to and including termination of subtenant agreement."

13.0 Indemnity

For and in consideration of the permissive use of the Premises described above, Customer agrees to indemnify, waive, and save harmless Energy Northwest and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or violation or breach of Paragraph 1.0. by Customer, its representatives, agents, invitees, guests or employees, including any and all expense, legal or otherwise, incurred by Energy Northwest or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Energy Northwest or its representatives. Customer's duty to indemnify does not apply to the negligent act or omission of its subtenants.

Customer agrees that if their current Liability Insurance does not sufficiently cover the operations of the "Premises" a supplement to their agreement shall be obtained to indemnify Energy Northwest. Customers' insurance shall name Energy Northwest as an additional insured to Customer's policy.

Energy Northwest agrees to indemnify, waive, and save harmless Customer and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or violation or breach of Paragraph 1.0. by Energy Northwest, its agents, servants or employees, including any and all expense, legal or otherwise, incurred by Customer or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Customer or its representatives.

Except as noted in this paragraph, Energy Northwest shall not be responsible for or have any liabilities for damages suffered by Customer, its agents, officers, employees, invitees or licensees, customers, subcontractors, suppliers, or any other third party in the event a problem occurs with the operations of the "Premises" and/or any problem which results in failure in operations of these facilities. Such damages shall include, but not be limited to: violation of any third party intellectual property rights; loss or restoration of data or financial loss as a result of failure of operations, and all claims of any kind by Customers' end users. In the event of Energy Northwest's unlawful or willful misconduct in operating the Premises or facilities, Energy Northwest's liability shall be limited to damages caused to Customer's physical assets located on the Premises. Provided in no event shall Energy Northwest be liable to Customer, its agents, officers, employees, invitees or licensees, customers, subcontractors, suppliers or any other third party for damages for loss of use.

For the purpose of fulfilling this indemnity obligation, each Party agrees that this indemnity agreement shall apply to, but not be limited to, actions brought by its own employees against the other Party; i.e., for the purposes of suits brought against a Party ("sued Party") by the other Party's own injured employee ("employing Party"), the employing Party waives its immunity rights or protections created by the Worker's Compensation Act solely for the purpose of indemnifying the sued Party for the employing Party's own injured employee. The Parties agree that for actions brought by a Party's employee where the employee is solely suing its employer, the employing Party has not waived its Worker's Compensation Act and/or Industrial Insurance Act immunity rights or protections. **THE PARTIES HEREBY ACKNOWLEDGE THIS PROVISION WAS MUTUALLY AGREED TO BY BOTH PARTIES.**

As used in this provision, the phrase "any and all expense" includes, but is not limited to, claims, suits, judgments or proceedings for services, taxes, labor performed, materials furnished, provisions, supplies, board and room, liens, medical expenses, pain and suffering, bodily injury, death, loss of earnings, loss of consortium, garnishments, court costs and attorney fees (including those required to seek enforcement of this agreement), and other costs of defense.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place the following indemnification requirement:

"For and in consideration of the permissive use of the Premises, subtenant agrees to indemnify, waive, and save harmless Energy Northwest and its representatives from and against any and all liability arising from injury or death of persons or damage to property occasioned by any negligent act or omission or usage of the property by subtenant, its representatives, agents, invitees, guests or employees, including any and all expense, legal or otherwise, incurred by Energy Northwest or its representatives in the defense of any claim or suit relating to such injury or damage. This indemnification does not apply to liability arising from the negligence of Energy Northwest or its representatives."

In the event of a violation or breach by Customer's subtenants of this provision in their subtenant agreement, Customer agrees to assign any and all claims and remedies to Energy Northwest for resolution.

14.0 Insurance

The Customer shall, at Customer's expense, maintain its membership in PURMS Joint Self-Insurance Agreement ("PURMS Agreement"), or a commercial general liability insurance policy with an insurer acceptable to Energy Northwest, insuring against any and all claims for injury to or death of persons and loss of or damage to property occurring upon, in or about the Premises arising from an act or omission of the Customer or any of its agents, employees, and representatives. Such agreement or insurance shall have liability limits of \$2 million combined single limit for bodily injury and property damage per occurrence and in the aggregate.

Customer shall require its subtenants to carry commercial general liability insurance coverage or show proof of self-insurance with the same requirements and limits as provided herein and name Energy Northwest as an additional insured on the policy.

Customer or Customer's PURMS or insurer or Customer's Subtenant, or its insurer shall have the option to perform any required environmental remediation, or to pay for or reimburse the costs of any required environmental remediation to the satisfaction of Energy Northwest, Energy Northwest's insurer and the responsible regulatory authorities.

All insurance or PURMS Agreement required above shall be primary insurance as respects the Energy Northwest for any and all covered Customer's liabilities arising from an act or omission of the Customer or any of its agents, contractors, representatives, licensees or invitees. Any such insurance maintained by Energy Northwest shall be excess of Customer's insurance and shall not contribute to it. The liability of Customer and any of its insurers shall not be reduced, offset, or otherwise affected by the existence and/or collectability of any insurance maintained by Energy Northwest and;

- Shall contain a provision whereby the carrier agrees not to cancel or significantly modify the insurance without thirty (30) days prior written notice to the Energy Northwest; and
- Shall name the Energy Northwest as additional insured and
- Shall not contain a severability of interest's exclusion.
- Shall contain a waiver of subrogation clause.

Customer agrees that if their current liability insurance or the PURMS Agreement does not sufficiently cover the operations of the "Premises" a supplement to their agreement or insurance shall be obtained to indemnify Energy Northwest. Customer's insurance or the PURMS Agreement shall name Energy Northwest as an additional insured to Customer's policy, or agreement.

The Parties understand that the comparative fault laws of the State of Washington will bind them.

On or before Benton PUD taking possession of the Premises pursuant to this Co-location Agreement, each party shall provide to the other a copy of the insurance policies, agreement, or certificates evidencing the aforesaid insurance coverage required above. Any commercial insurance shall be with underwriters acceptable to the Energy Northwest, such acceptance by Energy Northwest not to be unreasonably withheld. Renewal certificates and any changes in terms or underwriter shall be furnished to Energy Northwest for approval at least thirty (30) days prior to the expiration date of each policy for which a certificate was theretofore furnished.

Customer Property Insurance

The Parties understand that Lessee assumes all responsibility for loss to its personal property and leasehold improvements and alterations on the Premises, and Customer's loss of income due to fire on the Premises. Energy Northwest is in no way responsible for insuring, replacing, or repairing Customer's personal property, leasehold improvements and alterations, or loss of income, except for loss to Customer's personal property as a direct result of Energy Northwest's negligent acts, errors or omissions.

Energy Northwest Property Insurance

Energy Northwest shall, at Energy Northwest's expense, maintain for RSM CCCF a Commercial Property Policy including a Causes of Loss - Special Form, in an amount of the replacement value of the facility and permanently installed fixtures and equipment. All proceeds of any such insurance shall be payable to Energy Northwest and shall be applied to the restoration of the Premises. Any proceeds of such insurance remaining after such restoration shall belong to Energy Northwest.

Energy Northwest Environmental Hazards Insurance

Energy Northwest will maintain Environmental Hazards Insurance for accidental spills or releases at the RSM CCCF. By providing this insurance, Energy Northwest is in no way accepting or relieving the liability of such an event caused by Customer, its subtenants, and any of the Customer's or subtenants' representatives, agents, invitees, guests or employees. The liability of the Customer, any subtenants, and any of its insureds shall not be reduced, offset, or otherwise affected by the existence and/or collectability of any insurance maintained by Energy Northwest and;

Customer as it relates to its use of the Premises shall implement best management practices to prevent unplanned releases of hazardous substances (as defined by CERCLA Section 102, SARA Title III, and/or Section 112(r) of the CAA), including oil, or dangerous waste (as defined by WAC-173-303) to the environment. In the event of an unplanned release caused by Customer, Customer or Customer's Subtenant shall take steps to mitigate the extent and severity of the release and protect the environment. Customer shall immediately report to Energy Northwest any unplanned release occurring on the RSM CCCF Site by Customer or upon notification by Customer's Subtenant.

This immediate verbal report shall contain the following information:

- (1) Name, address, telephone number of the point of contact for Customer;
- (2) Location at which the release occurs;
- (3) Name and quantity of material(s) involved;
- (4) The extent of injuries, if any;
- (5) An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- (6) Estimated quantity of released material that resulted from the incident; and
- (7) Actions which have been undertaken to mitigate the occurrence.

The verbal notification shall be followed by a written report containing the same information within 5 working days of the event.

By January 31 of each year, Customer will provide Energy Northwest with an inventory of hazardous substances Customer has caused to be on the Premises to include chemical name, CAS number, container description, and amount in pounds.

In any and all of its subtenant (reference attachment A) agreements, Customer agrees that it shall place this requirement:

"Subtenant shall implement best management practices to prevent unplanned releases of hazardous substances (as defined by CERCLA Section 102, SARA Title III, and/or Section 112(r) of the CAA), including oil, or dangerous waste (as defined by WAC-173-303) to the environment. In the event of an unplanned release caused by Subtenant, Subtenant shall take steps to mitigate the extent and severity of the release and protect the environment. Subtenant shall immediately report to Benton PUD and Energy Northwest any unplanned release occurring on the RSM CCCF Site.

This immediate verbal report shall contain the following information:

- (1) Name, address, telephone number of the point of contact for Subtenant;
- (2) Location at which the release occurs;
- (3) Name and quantity of material(s) involved;
- (4) The extent of injuries, if any;
- (5) An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- (6) Estimated quantity of released material that resulted from the incident; and
- (7) Actions which have been undertaken to mitigate the occurrence.

The verbal notification shall be followed by a written report containing the same information within 5 working days of the event.

By January 31 of each year, Subtenant will provide Benton PUD and Energy Northwest with an inventory of hazardous substances Subtenant has caused to be on the Premises to include chemical name, CAS number, container description, and amount in pounds."

15.0 Environmental, Health and Safety

The Customer shall be solely responsible for all Customer activities conducted within RSM CCCF to ensure that such activities are, on an on-going basis, in compliance with the environmental/regulatory requirements of the Environmental Protection Agency or the Washington State Department of Ecology, the health and safety requirements of OSHA, WSHA, the City of Richland and Benton County, and with any environmental or personnel health and safety requirements that may be established and communicated in writing by RSM CCCF management.

Customer agrees to collect and dispose of any and all hazardous waste generated by his or her activities at RSM CCCF in compliance with local, state, and federal laws and regulations.

16.0 Assumption of Risk

To the extent permitted by law, the Customer assumes all risk of injury to persons or damage to property occurring in or about the Premises as a result of Customer's use or occupancy of the Premises (unless caused by the negligent act, error or omission of Energy Northwest, its employees or agents), the negligence or willful misconduct of Customer, its agents, officers, representatives, employees, invitees or guests, or as a result of Customer's failure to perform or abide by any of the covenants or conditions of this Agreement. The Customer shall reimburse Energy Northwest for any costs or expenses, including attorney's fees, which Energy Northwest may incur in defending any such claim.

Energy Northwest shall not be responsible for any injuries or damages incurred by Customer, its agents, officers, employees, invitees or licensees arising from acts or omissions of any subtenants or from any cause other than the negligence or willful misconduct of Energy Northwest or its employees.

17.0 Security

Customer, and their respective employees, agents, invitees and licensees agree to comply with all security regulations and procedures established by Energy Northwest for the facility. Energy Northwest shall provide up to two (2) Customer employees and up to two (2) of Customer's subtenants employees, and such other individuals designated by Customer, and agreed to by Energy Northwest, with electronic security access to the facility, including common use areas. Customer shall pay Energy Northwest ten dollars (\$10) for each electronic access key card or for replacements thereof due to damage or loss.

Customer shall provide and maintain at its sole expense its own security provisions specific to portions of the Customer Premises for which Customer security requirements exceed facility security provisions provided by Energy Northwest. Customer shall provide Energy Northwest reasonable access to such Customer secured areas in case of emergency, and to provide Energy Northwest with reasonable assurance that Customer remains in compliance with the terms and conditions of this Agreement, and to conduct routine facility maintenance and inspections in accordance with the terms and conditions of this Agreement.

Note: DOE site specific access rules for the site access road, gate 106 on the main road (US Department of Energy Res. RD) leading to RSM CCCF site and 2nd security gate to the site will be added when finalized.

18.0 Site Access Customer acknowledges and understands that in accordance with paragraph 11 of the DOE License incorporated herein, that road maintenance is limited to snow and debris removal, and necessary repairs so that Customer and Customer subtenants can utilize the road at their own risk for travel to and from the CCCF as required to sustain radio operation of their systems.

19.0 Site Rules Customer represents that its employees, representatives, invitees and agents will abide by all Energy Northwest rules and regulations while on the Premises.

20.0 Interference with Communications Customer and Energy Northwest shall cooperate with each other and any third parties occupying space on the Premises so as to: (1) not create unreasonable radio frequency interference with the transmission operations with each other and any third parties occupying space on the Premises; (2) minimize and/or determine the cause of interference between their respective operations on the premises. In the event such interference occurs, the party causing the interference agrees to correct such interference within 48 hours of written notice by Energy Northwest or cease use of its facilities.

Any subtenant agreements entered into by Benton PUD which permits the installation of telecommunications equipment on the Premises shall include the following provision: "Customer agrees to operate its transmission equipment so as to not create unreasonable radio frequency interference with the transmission operations of any third party occupying space on the Premises. In the event such interference is caused by

tenant, tenant agrees to correct such interference within 48 hours of written notice by Energy Northwest or cease use of its facilities."

21.0 Interpretation The agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

22.0 Entire Agreement This agreement and any addenda, attachments, exhibits, and other documents incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersede all other representations, understandings or agreements that are not expressed herein, weather oral or written. Except as otherwise set forth, no amendment to this Agreement shall be valid unless in writing and signed by both Parties.

23.0 Notices For purposes of this Agreement, notices as required hereunder or otherwise desired by the Customer shall be forwarded to Energy Northwest's representative:

Jacque Fuller, Telecommunications Supervisor
Energy Northwest
PO Box 968 MD 1032
Richland, WA 99352
509.377.8757

Notices as required hereunder or otherwise desired by Energy Northwest shall be forwarded to Customer's representative:

Stephen B. Hunter, Director of Operations
Benton PUD
PO Box 6270
Kennewick, WA 99336
509.582.1237

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, in duplicate, as of the date first written above.

**PUBLIC UTILITY DISTRICT NO. 1
OF BENTON COUNTY, WASHINGTON**

Chad B. Bartow
Name

**ENERGY NORTHWEST
Business Development Fund**

Richard Skiff
Name

Asst General Manager
Title

Supervisor, Purchasing/Contracts
Title

4/15/10 CBB
April 13, 2010
Date

5/24/10
Date