

FILED FOR RECORD AT REQUEST OF:

Benton County, Washington

WHEN RECORDED RETURN TO:

Benton County Sheriff's Office
7122 W. Okanogan Pl., Suite A120
Kennewick, WA 99336

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND BENTON COUNTY SHERIFF'S OFFICE
FOR LAW ENFORCEMENT SERVICES
AGREEMENT NO. 350901**

This agreement is made and entered into by and between Energy Northwest and Benton County (hereinafter "BCSO"), pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which BCSO, through its Sheriff's Office, shall provide specialized law enforcement services (hereinafter referred to as "Services") on an as-needed and requested basis to Energy Northwest as set forth in the attached and incorporated herein Exhibit A – Statement of Work.

**ARTICLE II
ADMINISTRATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 Energy Northwest's commercial representative shall be Christopher La Plante, Lead Procurement Specialist, P.O. Box 968, Richland, WA 99352, (509) 377-4380 or cllaplante@energy-northwest.com
- 2.03 Energy Northwest's technical representative shall be Tyson Best, Security Operations Supervisor, P.O. Box 968, Richland, WA 99352, (509) 372-5578 or tmbest@energy-northwest.com.
- 2.04 Benton County Sheriff Office's representative shall be Commander Mathew Clarke, Benton County Sheriff's Office, 7122 W. Okanogan Pl., Suite A120, Kennewick, WA 99336, (509) 735-6555 or Mathew.Clarke@co.benton.wa.us.

- 2.05 Energy Northwest may submit requests for Services to the BCSO by email or phone.

ARTICLE III DURATION AND RENEWAL OF AGREEMENT

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective January 1, 2023 and continue through December 31, 2024, unless terminated sooner.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** BCSO shall be paid by Energy Northwest for Services rendered based on the following rates throughout the duration of the Agreement. These rates are inclusive of overhead, general, and administrative costs and profit. Five thousand dollars (\$5,000.00) per quarter of each calendar year unless said Agreement is terminated prior to completion of a full quarter whereupon BCSO shall refund Energy Northwest the pro-rated amount of the current quarterly payment. Quarterly payments are due and payable within thirty (30) days of the beginning of each quarter. Any quarterly payment due over thirty (30) calendar days or more will be subject to a service charge of one percent (1%) per month. Should collection of the quarterly payment(s) be necessary all collection costs shall be borne by the party found to be delinquent in payment.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other material for the applicable retention period under federal and Washington law.
- 5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

- 5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.
- 5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to BCSO shall be to the Benton County Sheriff's Office, 7122 W. Okanogan Pl., Suite A120, Kennewick, Washington 99336; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to Energy Northwest for all purposes under this Agreement shall be to the Cassandra Otto, PO Box 968, Richland, Washington 99352.

ARTICLE VI INDEMNIFICATION

INDEMNIFICATION.

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall

submit apportionment to binding arbitration. The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII DISPUTES

- 7.01 DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with all parties waiving the right of a jury trial upon de novo review. Venue shall be placed in Benton County, Washington, the laws of the State of Washington shall apply, and each party shall pay its own attorney fees and related costs. Arbitration costs incurred mutually, including but not limited to the cost of an arbitrator, shall be equally shared between the parties.

ARTICLE VIII TERMINATION

- 8.01 TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the

invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

- 9.04 ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by Energy Northwest, shall remain the sole property of Energy Northwest. All vehicles, equipment, inventory and any improvements thereto and non-fixture improvements to the premises purchased by BCSO, shall remain the sole property of BCSO. All Energy Northwest personnel utilized in the fulfillment of this Agreement shall be solely within the supervision, direction and control of Energy Northwest and shall not be construed as "loan servants" or employees of BCSO. No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement. A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on Energy Northwest's or BCSO's website as required by RCW 39.34.040.
- 9.06 EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, BCSO shall provide Energy Northwest with a certified copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit B.

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

ENERGY NORTHWEST

By: _____

Christopher La Plante
Lead Procurement Specialist

Date: 11/22/2022

BENTON COUNTY, WASHINGTON

By: _____

Shon Small, Chairman
Board of County Commissioners

Date: _____

Approved as to form:

Benton County Prosecuting Attorney

EXHIBIT A – STATEMENT OF WORK

Statement of Work

This Agreement is issued for specialized law enforcement services, under provisions of the Interlocal Cooperation Act (RCW 39.34). No special budget funds are anticipated, nor shall be created as a result of this Agreement. It is not intended that a separate legal entity be established pursuant to this Agreement, nor is the acquiring, holding, or disposing of real property other than specifically provided herein anticipated. BCSO is designated as the Administrator of this Interlocal Agreement. This Agreement shall be filed with the Benton County Auditor, or alternatively listed on its website or other electronically retrievable source. The Benton County Sheriff's Office (BCSO) shall provide law enforcement services to Energy Northwest in accordance with the approved "Benton County Sheriff's Office Law Enforcement Response Plan." Such services shall include the following:

1. **Intelligence Exchange**
Response to reasonable request for information from Energy Northwest in regard to known threats to Station facilities, such as planned demonstrations or sabotage/bomb threats, in accordance with the law.
2. **Single Unit Response**
Response by a single patrol unit to conduct investigations or make arrests for criminal acts of a minor nature.
3. **Station Access/Crowd Control**
Response to reasonable requests for assistance for the purpose of controlling access to Station facilities in the event of civil disturbance, fire, radiological release, or other threat situations where access or crowd control is required.
4. **Roadblock**
Response to reasonable request for coordination of road block assistance by Local Law Enforcement Agencies (LLEA) to prevent escape of a saboteur or other adversary having committed a felony crime at Station facilities or to restrict access and provide evacuation control measures during an emergency condition.
5. **Hostage Situation**
Response to reasonable request with trained hostage negotiator to assist during situations where a hostage is held by an adversary.
6. **Bomb Search and Disposal**
Coordination of assistance by LLEA bomb disposal personnel when required.
7. **Armed Attack**
Response to reasonable request to neutralize and apprehend adversaries and to protect Energy Northwest employees, contract employees and armed attack.

8. Criminal Records

Process requests for criminal records check as required to support Energy Northwest background screening in accordance with Nuclear Regulatory Commission requirements, in accordance with the law.

9. Training

Provide personnel as reasonably required for annual Station familiarization, response training, and to support Emergency Preparedness exercises and drills.

10. Special Requests

Provide within its capabilities reasonable specialized law enforcement services upon written request by the authorized Energy Northwest Technical Representative or designee.

11. Written Reports

Provide written activity summary reports upon completion of special services or as reasonably requested by the authorized Energy Northwest Technical Representative or his designee.

Energy Northwest will issue written requests for specialized services to BCSO. Any verbal requests for specialized services shall be confirmed by Energy Northwest in writing.

Energy Northwest may approve or disapprove BCSO estimates of cost and scope of services prior to a service being rendered.

Energy Northwest will reimburse BCSO for actual costs of mutually agreed to special services beyond the general scope of this Agreement as described in Appendix A, Statement of Work, Item #10 Special Requests.

All Energy Northwest property, including advanced funds or property recovered pursuant to this Agreement shall be returned promptly to Energy Northwest when no longer needed for evidentiary or other purposes.