

CONTRACT NO. 13-033



**ENERGY
NORTHWEST**

AMENDMENT DOCUMENT

Issued By: Sherri Schwartz, Procurement Specialist III

Contractor: City of Richland
505 Swift Blvd.
Richland, WA. 99352
Attn: Clint Whitney

Agreement No.: X-40553
Amendment No.: 02
Amendment Date: December 30, 2019

1. DESCRIPTION OF AMENDMENT

A. Description of Change: Extend the Term of Use clause 3.0.

B. Time of Completion: The Term of Use shall extend through January 1, 2023.

2. EXECUTION

All other terms, covenants and conditions of the above referenced Agreement documents, except as duly modified by this and previous amendments, if any, remain in full force and effect.

CITY OF RICHLAND

Accepted By: Cynthia D. Reents

Name: Cynthia D. Reents

Title: Richland City Manager

Date: 01/03/2020

ENERGY NORTHWEST

Accepted By: Sherri Schwartz

Name: Sherri Schwartz

Title: Procurement Specialist III

Date: 12/30/19

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**SHARED SERVICES AGREEMENT
NUMBER X- 40553**

THIS AGREEMENT entered into this 25th day of April , 2013, by and between Energy Northwest, (EN), a joint operating agency and municipal corporation in the State of Washington, (hereinafter referred to as "Energy Northwest"), and the City of Richland, with its principal place of business being located at 505 Swift Blvd, Richland, WA. 99352, (hereinafter referred to as the "COR", (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 agreements are attached for ease of reference and are hereby incorporated into this agreement and are binding and fully enforceable upon the Parties:

- Co-Location Agreement between EN and Benton County Emergency Services (BCES)– Attached hereto as Exhibit "A";
- Co-Location Agreement between EN and Benton Public Utility District (BPUD) Attached hereto as Exhibit "B"; and
- Lease agreement between BCES and Frontier Communications – Attached hereto as Exhibit "C".

1.0 Usage of Property

1.1 Location-Badger Mountain

EN has entered into a separate agreement with BCES, to co-locate in the Badger Mountain facility owned by BCES. See Exhibit A.

EN and the COR have a mutual shared interest in reducing costs and combining resources in the BCES facility located on Badger Mountain for the purposes of locating, operating and maintaining radio equipment, (hereinafter referred to as "shared equipment"). With respect to the shared equipment, the Parties agree as follows:

- 1.1.1. Energy Northwest agrees to procure a combiner and associated equipment sufficient in design to provide shared usage for Energy Northwest and the COR's radio equipment.
- 1.1.2 The COR shall install and maintain an antenna and associated equipment to provide shared usage for the COR and Energy Northwest.
- 1.1.3 The COR shall install and maintain the Energy Northwest combiner and perform the required hook-ups to the antenna and combiner for both Parties.

- 1.1.4 BCES has a contract with Frontier Communications to lease space on their tower to locate and operate the COR antenna. The COR agrees to provide BCES with the Parties' plans to ensure there are no issues with the shared antenna.

1.2 Location- Prosser Butte

EN and the COR have separate agreements with Benton Public Utility District, ("BPUD"), to co-locate in the Prosser Butte facility owned by BPUD.

EN and the COR have a mutual shared interest in reducing costs and combining resources in the BPUD facility located at Prosser Butte for the purposes of locating, operating and maintaining radio equipment, (hereinafter referred to as "shared equipment"). With respect to the shared equipment, the Parties agree as follows:

- 1.2.1 EN agrees to procure a combiner and associated equipment sufficient in design to provide shared usage for EN and the COR's radio equipment.
- 1.2.2 EN will keep EN's reserved tower location and allow the COR to utilize EN's tower space to install their antenna.
- 1.2.3 COR shall perform a tower structural analysis to determine if the tower meets TIA-222-F and/or TIA-222-G standard. COR will provide a copy of the report to EN.
- 1.2.4 The COR shall install and maintain an antenna and associated equipment to provide shared usage for the COR and Energy Northwest.
- 1.2.5 The COR shall install and maintain EN's combiner and perform the required hook-ups to the antenna and combiner for both Parties.

To the extent that the provisions of 1.0, including subsections 1.1 and 1.2, are consistent with all other provisions of this Agreement, the COR and EN shall co-operate with each other and any third parties occupying space at these facilities so as to not unreasonably hinder or impact the business operations of each other and any third parties who are occupying space therein.

2.0 Permitted Uses

EN and the COR are authorized under separate agreements with BCES and BPUD to utilize said facilities for the purposes of locating, operating and maintaining radio equipment in accordance with applicable laws, regulations and requirements. See Exhibits A through C attached hereto. Said facilities shall be utilized solely for such purpose(s) and for no other purpose. EN and the COR have a mutual interest in combining resources at both locations and install "shared equipment", including but not limited to, combiners, antennas, associated cabling, and tower locations.

3.0 Term of Use

The period of performance shall commence April 25th, 2013 ("Commencement Date") and end January 1, 2015. The Parties may extend this agreement at any time by written notice at least thirty (30) days before the termination date.

4.0**Compensation, Billing and Payment**

EN and the COR agree there will be "no cost" other than those referenced above associated with this Agreement.

5.0**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 ninety (90) days notice. Notice of such termination shall be in writing and shall be effective upon receipt of such notice by the receiving party. In the event of termination by either party, both parties agree to abandon in place "shared equipment" required for the operation of the others party's radio systems.

6.0**Assignment**

The Parties 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 the other party, which consent shall not be unreasonably withheld.

7.0**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. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, the Parties MAKE NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

8.0**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.

9.0**Condition of the COR Antenna and Combiner System**

Except as specified in this section 9.0 the Parties make no express or implied warranty or representation as to the condition of the antenna or combiner system, or to the suitability of said system for the usage outlined above.

10.0**Indemnity**

For and in consideration of the permissive use of the system described above, the Parties mutually agree to indemnify, waive, and save harmless the other Party and its representatives from and against any and all liability arising from injury

or death of person or damage to property occasioned by any negligent act or omission or violation or breach of Section 1.0 by the other Party, its representatives, agents, invitees, guests or employees, including any and all expense, legal or otherwise, incurred by the other Party 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 the other Party or its representatives.

The Parties shall not be responsible for or have any liabilities for damages suffered by the other Party, 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 "Facilities" 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 the Party's end users. In no event shall the Parties be liable to the other Party, 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, the Parties agree that this indemnity agreement shall apply to, but not be limited to, actions brought by its own employees against their employer.; The Parties agree that for actions brought by their own employee where the employee is solely suing its employer, the Parties have 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.

11.0 Insurance

Both Parties, at their own expense, shall maintain its commercial general liability insurance policy 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 facilities arising from an act or omission of the Party 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.

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

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

written. Except as otherwise set forth, no amendment to this Agreement shall be valid unless in writing and signed by both Parties.

18.0 Notices

For purposes of this Agreement, notices as required hereunder or otherwise desired by EN shall be forwarded to EN's representative:

Jacque Fuller, IT Lead
Energy Northwest
PO Box 968 MD 1032
Richland, WA 99352
509.377.8757

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

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

THE CITY OF RICHLAND



Name

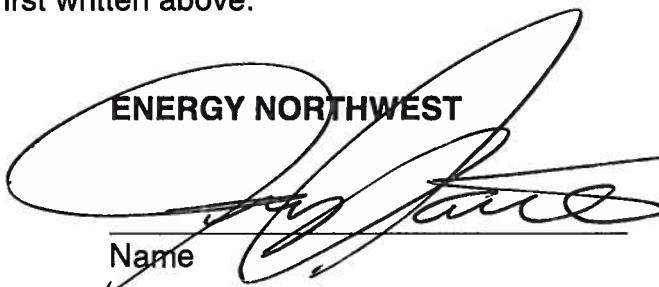
PURCHASING MANAGER

Title

4.25.13

Date

ENERGY NORTHWEST



Name

Contracting Officer

Title

6-4-2013

Date

On or before [redacted] locating within the facilities pursuant to this Shared Services 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 Parties, such acceptance by the Parties shall not be unreasonably withheld. Renewal certificates and any changes in terms or underwriter shall be furnished to the Parties for approval at least thirty (30) days prior to the expiration date of each policy for which a certificate was theretofore furnished.

12.0 Property Insurance

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

13.0 Assumption of Risk

To the extent permitted by law, the Parties assume all risk of injury to persons or damage to property occurring in or about the facilities as a result of the Parties use or occupancy of the facilities (unless caused by the negligent act, error or omission of the other Party, its employees or agents).

14.0 Equipment Access

The Parties agree that access to the combiner and antenna system shall be available on an "as-needed" basis with prior notification to the other Party.

15.0 Interference with Communications

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

16.0 Interpretation

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

17.0 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