

CO-LOCATION AGREEMENT NO. X-40582

between
Energy Northwest
and the
City of Richland

This Co-Location Agreement, entered into this 20th day of January, 2015, is by and between the City of Richland, a municipal corporation of the State of Washington, with offices at 505 Swift Blvd, Richland, WA 99352, hereinafter referred to as "COR," and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington and doing business by and through its Business Development Fund, with its principal office at P.O. Box 968 Richland, WA 99352, hereinafter "Energy Northwest," (collectively hereinafter referred to as the "Parties" and independently as the "Party").

In consideration of the mutual promises and covenants herein, the parties hereby agree as follows:

1. Usage of Property

- a. Energy Northwest shall permit COR to utilize certain portions of Energy Northwest property described as follows: Applied Process Engineering Laboratory "APEL Facility," Co-Location Room, at 350 Hills Street, Richland, WA 99352 (hereafter referred to as "Premises"). Specifically, COR has a right to utilize the Co-Location Room solely for the purposes set forth in Article 2 of this Agreement. The permission granted under this Agreement shall not be construed to convey any right, title, or interest in the Premises to COR.
- b. Energy Northwest shall permit the use of optical fiber that enters into the north side of the vault identified as "CV1" and located near the base of the APEL tower, and exits the east side of the vault to enter the APEL Facility. The optical cable will be installed by COR. Specific ports will be identified at the time of installation. The cabling shall be labeled in the vault as belonging to COR, where cabling enters the APEL Facility, and where the cabling terminates. Authorization to use and conduct activities within the vault must be authorized by the Port of Benton and Energy Northwest.
- c. COR represents that the rights granted to it under this Agreement shall in no way hinder or impact any Energy Northwest or other Energy Northwest Customers' business operation.

2. Permitted Uses

COR is authorized to utilize said Premises for the purposes of locating, operating and maintaining telecommunications cable 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 Room constitutes the assignment by Energy Northwest cable pathway or other specification of a location for the installation of personal property,

business and trade fixtures, and equipment owned or leased by COR (collectively, the "Equipment") at the Premises.

COR understands and agrees that access to the Premises is by escort-only as provided by Energy Northwest. As a condition for use of the Premises, COR agrees to provide two (2) hours' advance notice to gain escorted access to the property by calling the Energy Northwest IS Duty Officer (509) 377-5656 or other individual as specified by the Technical Representative, Vern Turney, (509) 377-4627.

3. Approval by Energy Northwest

Any installations, alterations, improvements, or repairs made by COR shall be at COR'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, 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 over the Premises and/or the Parties. COR will pay directly or reimburse Energy Northwest for any cost incurred by Energy Northwest in obtaining said approval(s). If requested by Energy Northwest, COR will post a bond or other security reasonably satisfactory to Energy Northwest to protect Energy Northwest against liens arising from work performed for COR. All work performed shall be done in a good workmanlike 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 Room is located.

4. Restrictions on Use

Consistent with the uses permitted under Section 2 of this Agreement, COR, at its sole expense, shall cause the Co-Location Room and all aspects of its business operations and occupancy of the Co-Location Room to be continuously in compliance with all laws, ordinances, and regulations, now or hereinafter enacted concerning the Co-Location Room on the Premises.

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. Term of Use

- a. The initial lease term will be two (2) years ("Initial Term"), commencing upon the Commencement Date as defined below. The Initial Term will terminate on the last day of the month in which the second (2nd) annual anniversary of the Commencement Date occurs.
- b. This Agreement may be renewed by the Parties for up to three (3) additional one (1) year term(s) (the "Extension Term") upon the same terms and

conditions contained herein unless COR notifies Energy Northwest in writing of COR's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing term.

- c. COR shall have the right, at the discretion of Energy Northwest, to utilize the premises at all hours during the period commencing December 1, 2014 and ending November 30, 2016, unless the Agreement is otherwise renewed by COR in accordance with Section 5(b) for an Extension Term.

6. Compensation, Billing and Payment

- a. Rent: Rent to utilize the Energy Northwest property described in Section 1 shall be \$0.
- b. Services: COR agrees to pay to Energy Northwest a one-time fee in the amount of one-thousand five-hundred dollars (\$1,500) for initial installation support. In the event that escorted access requirements by COR are required, Energy Northwest will charge COR \$65/per hour for each hour of escorted access.
- c. Invoices will be submitted monthly when necessary, 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 (1.5%) per month. If COR 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 COR 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.
- d. In year one (1) of each Extension Term, the hourly escort rate will increase by 3% over the escort hourly rate paid during the previous term.

7. Taxes and Assessments

COR shall pay all federal, state and local taxes and assessments levied against the COR's property, the improvements thereon, or any business activities performed by COR during the term of this Agreement.

8. Termination

- a. Either party may terminate this Agreement at any time, with or without cause, by providing the other Party a minimum of sixty (60) calendar days' notice. Notice of such termination shall be in writing and shall be effective upon COR or Energy Northwest's receipt of such notice. In the event Energy Northwest is

issuing the termination notice, COR shall be allowed a reasonable time, not to exceed one (1) month, to remove its property from the Premises.

- b. Upon termination of this contract, the ownership of the optical cable installed by COR will transfer to Energy Northwest at the point of entry into vault CV1 for the remainder of the cable run into the APEL Facility.

9. Assignment

COR 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 be unreasonably withheld.

10. 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 COR 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 NETWORK OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

11. 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. COR's invocation of this clause shall not relieve COR of its obligation to pay for any services actually received. In the event such failure continues for sixty (60) days, the other Party may terminate the affected portion of the Services.

12. Damage by Fire or Other Casualty

If the Premises are destroyed by fire or other casualty, this Agreement will immediately terminate. In case of partial destruction or damage, so as to render the Premises untenable, as determined by COR, COR may terminate this Agreement by giving written notice to Energy Northwest within fifteen (15) calendar days thereafter. COR shall remain liable to Energy Northwest for any unpaid escorted access fees (referenced in Section 6(a)) incurred by COR up to the date of termination, and shall remit payment for the same in accordance with Section 6(b).

13. Condition of the Premises

The Premises are accepted by COR "As-Is." 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. COR agrees that it has inspected said Premises and found them acceptable for its uses.

14. Return of Premises

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

15. Indemnity

- a. For and in consideration of the permissive use of the Premises described in Section 2 above, COR 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 Section 1 by COR, its agents, invitees, servants 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 sole negligent or intentional acts of Energy Northwest or its representatives. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Energy Northwest and COR, COR's liability hereunder, including the duty and cost to defend, shall be limited the extent of and in proportion to COR's negligence.
- b. Energy Northwest shall not be liable for damages suffered by COR, its agents, officers, employees, invitees, licensees, suppliers, subcontractors, end-users, or any other third party in the event of an operations failure of the Premises. Such damages shall include, but not be limited to, violation of any third-party intellectual property rights, loss or restoration of data, financial loss as a result of failure of operations, and any other claims of any kind by COR's end-users.
- c. For the purpose of fulfilling this indemnity obligation, COR hereby waives any and all immunity rights or protections created by the Worker's Compensation Act, and further agrees that this indemnity agreement shall apply to, but shall not be limited to, actions brought by its own employees. COR hereby acknowledges this provision was mutually agreed to by both parties.

- d. 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.

16. Insurance

COR shall, at COR's expense, maintain Commercial General Liability insurance 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 COR or any of its agents, contractors, representatives, licensees or invitees. Such insurance shall have minimum liability limits of \$2 million for bodily injury and property damage per occurrence and in the aggregate.

COR shall, at COR's expense, maintain fire and extended coverage insurance insuring COR's personal property in or on the Premises for 100-percent (100%) of its full insurable and replacement cost, without deduction for depreciation.

All insurance required above shall be primary insurance with respect to Energy Northwest for COR's liabilities arising from an act or omission of COR or any of its agents, contractors, representatives, licensees or invitees. Any such insurance maintained by Energy Northwest shall be in excess of COR's insurance and shall not contribute to it. The liability of COR 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.

Further, COR's insurance coverage:

- Shall not contain a severability of interests 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. COR's membership in Washington Cities Insurance Authority (WCIA), a self-insured municipal risk pool, covers all sums which COR shall be obligated to pay by reason of liability imposed upon COR by law; or assumed under contract or agreement by COR and/or any officer, director, official, or employee of COR, while acting in his or her capacity as such, and will satisfy the insurance requirements of this Agreement. COR shall provide Energy Northwest with written notice of any policy cancellation, within two business days of their receipt of such notice.

On or before taking possession of the Premises pursuant to this Co-location Agreement, COR shall provide Energy Northwest with evidence of required coverage. COR will provide a copy of insurance coverage policies upon request.

- COR Property Insurance: The Parties understand that COR assumes all responsibility for loss to its personal property and leasehold improvements and alterations on the Premises, and COR's loss of income due directly or indirectly to fire or other peril on the Premises. Energy Northwest is in no way responsible for insuring, replacing, or repairing COR's personal property, leasehold improvements and alterations, or loss of income, except for loss to COR's personal property as a direct result of Energy Northwest's negligent or intentional acts, errors or omissions. Further, Energy Northwest will not be responsible for any lost or corrupted data, confidential or otherwise, from any cause, including utility service interruption.
- Energy Northwest Property Insurance: Energy Northwest shall, at Energy Northwest's expense, maintain for APEL 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.

17. Environmental, Health and Safety

COR shall be solely responsible for all COR activities conducted within the Premises, and for ensuring that such activities are, on an on-going basis, in compliance with the environmental/regulatory requirements of the Environmental Protection Agency (EPA) or the Washington State Department of Ecology, the health and safety requirements of OSHA, WSHA, Benton County and the City of Richland, and with any environmental or personnel health and safety requirements that may be established and communicated in writing by APEL management and/or Energy Northwest.

COR agrees to collect and dispose of any and all hazardous waste generated by its activities within the Premises, in strict compliance with local, state, and federal laws and regulations.

COR 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, COR shall take steps to mitigate the extent and severity of the release and protect the environment. The COR shall immediately report any unplanned release occurring on the Premises.

This immediate verbal report shall contain the following information:

1. Name, address, telephone number of the point of contact for COR;
2. Location where the release occurred;

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 within five (5) business days containing the same information regarding the unplanned release or event.

Before introduction to the Premises, COR shall provide Energy Northwest with an inventory of any hazardous substances it intends to utilize, to include the chemical name, CAS number, container description, and amount in pounds.

If COR breaches the obligations set forth in this section, then COR shall be solely and wholly responsible for remediation of the hazard, and otherwise liable to Energy Northwest for all claims, damages, penalties, fines, costs, liabilities and/or losses that result from the breach.

18. Assumption of Risk

COR assumes all risk of injury to persons or damage to property occurring in or about the Premises as a direct result of COR's use or occupancy of the Premises, the negligence or willful misconduct of COR, its agents, officers, employees, invitees or licensees, or as a result of COR's failure to perform or abide by any of the covenants or conditions of this Agreement. COR 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 COR, its agents, officers, employees, invitees or licensees arising from acts or omissions of any covenants or from any cause other than the negligence or willful misconduct of Energy Northwest or its employees.

19. Security

Energy Northwest, COR, and their respective employees, agents, invitees and licensees agree to comply with all security regulations and procedures established by Energy Northwest for the facility. Access to the Co-Location Premises is on an escorted basis and can be requested by contacting the Energy Northwest IS Duty Officer at (509) 372-5656. Energy Northwest will make every attempt to respond by providing access within two (2) hours.

COR shall provide and maintain, at its sole expense, its own security provisions specific to portions of the Premises utilized by COR for which COR security requirements exceed facility security provisions provided by Energy Northwest. COR shall provide Energy Northwest with reasonable access to such COR secured areas for the following reasons:

- In case of emergency; and
- To provide Energy Northwest with reasonable assurance that COR remains in compliance with the terms and conditions of this Agreement; and
- To enable Energy Northwest to conduct routine facility maintenance and inspections of the Premises in accordance with the terms and conditions of this Agreement.

20. Site Rules

COR represents that its employees, representatives, invitees and agents will abide by all Energy Northwest rules and regulations while on Energy Northwest Premises.

21. Interpretation

The Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, both as to its interpretation and performance, exclusive of any conflict of law provision that would apply the laws of another jurisdiction.

22. Jurisdiction

Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in the State of Washington.

23. Severability

The Parties agree that if a court holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular invalid provision.

24. 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 herein, no amendment to this Agreement shall be valid unless in writing and signed by an authorized representative of both Parties.

25. Washington's Public Record Act

COR further understands and agrees that this Agreement may become a public record in accordance with Washington law and may not be exempt from disclosure under the

Washington State Public Records Act. In the event any request for disclosure to the public is made for this Agreement or data related to this Agreement, Energy Northwest shall give COR notice of the request. In the event COR wants to contest the disclosure, COR shall assume the defense of any such action, at its sole cost and expense, and shall hold Energy Northwest harmless for any costs, including attorney's fees and statutory awards, imposed by any court or regulatory authority upon Energy Northwest for denial of any right to inspect or copy such Agreement or documents as public records.

26. Disclaimer of Damages

Notwithstanding any other provision of this Agreement, neither Party shall be liable under any theory of recovery whether based in contract or in tort (including negligence and strict liability), under warranty, or any other legal or equitable theory for any consequential, special, indirect or incidental damages such as, but not limited to, loss of power, loss of use, loss of production, loss of data or information, cost of purchased or replacement power, cost of capital, loss of goodwill, loss of opportunity, loss of revenues or profits, or the loss of use thereof.

27. Interference with Communications

COR 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; and (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.

28. Inspection of Premises

COR shall allow Energy Northwest free access at all reasonable times to the Premises for the purpose of inspection and to fulfill any of Energy Northwest's obligations under this Agreement. Energy Northwest shall have the right to inspect the Premises and review COR's activities to provide reasonable assurances to Energy Northwest and/or regulatory authorities that such activities and the condition of the Premises are in compliance with applicable environmental regulations and permit conditions or commitments. Such review shall in no way relieve COR of primary responsibility or liability for such compliance, nor the consequences of any failure of COR to comply.

29. Disputes

Pending resolution of a disputed matter, the Parties shall continue performance of their respective obligations pursuant to this Agreement. Disputes regarding any factual matter relating to this Agreement shall be discussed by the Parties' authorized representatives who shall use their reasonable efforts to amicably and promptly resolve the dispute.

Should the authorized representatives be unable to resolve any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the Parties agree that the controversy or claim shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) shall be entered in any court having jurisdiction thereof.

30. Access to Books/Records

Each Party may, at reasonable times, and upon prior notification, inspect the records of the other party relating to the performance of this Agreement. The Parties shall keep all records required by this Agreement in accordance with statutory archival requirements.

31. Notices

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

Ron Butler, Pr. Contracting Officer
Energy Northwest
PO Box 968 MD 1032
Richland, WA 99352
Telephone: (509) 377-4181

Notices required hereunder or as desired by COR shall be forwarded to the COR Representative:

Kevin Grumbling, Information Technology Manager
City of Richland
PO Box 190, MS #32
Richland, WA 99352
Telephone: (509) 942-7499

[Signature page to follow]

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


CITY OF RICHLAND



Cynthia D. Johnson, ICMA-CM Date
Richland City Manager

2-4-15

**ENERGY NORTHWEST
BUSINESS DEVELOPMENT FUND**



Name Date
Title: Pr. Contracting officer

Approved as to Form:



Heather Kintzley, Richland City Attorney

RESOLUTION NO. 11-15

A RESOLUTION of the City of Richland authorizing the City Manager to execute a co-location agreement with Energy Northwest for the purpose of locating, operating and maintaining telecommunications cable in Energy Northwest's APEL facility.

WHEREAS, the City is currently constructing, and intends to subsequently lease fiber optic telecommunication cables to entities seeking to utilize the City's fiber optic telecommunication cable infrastructure; and

WHEREAS, placement of City of Richland telecommunications cable in Energy Northwest's APEL facility is advantageous in that it will strengthen the City's fiber optic network; and

WHEREAS, Energy Northwest is willing to allow the City of Richland to lease space in its APEL facility under the terms and conditions of a co-location agreement thoroughly vetted between the parties.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Richland hereby authorizes the City Manager to sign and execute a co-location agreement with Energy Northwest allowing for the location, operation, and maintenance of City of Richland telecommunications cable in Energy Northwest's APEL facility.


BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland at a regular meeting on the 20th day of January, 2015.



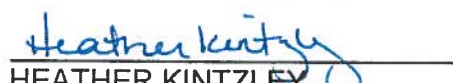
DAVID W. ROSE
Mayor

ATTEST:



DEBBY BARHAM
Deputy City Clerk

APPROVED AS TO FORM:



HEATHER KINTZLEY
City Attorney



11