



**INTERAGENCY/INTER-LOCAL AGREEMENT NUMBER X-40596
BETWEEN
ENERGY NORTHWEST
AND
MASON COUNTY PUD 1
TO PROVIDE TECHNICAL SERVICES AS REQUESTED**

As provided under RCW Title 39, Chapter 39.34, this Agreement for Technical Services (the "Agreement") is by and between Mason County PUD 1 in the State of Washington, with offices located at N. 21971 Hwy. 101, Shelton, WA 98584 (hereinafter referred to as "Mason "), 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 3000 George Washington Way, Richland, WA 99352 (hereinafter "Energy Northwest or EN").

WHEREAS, Mason finds that Energy Northwest is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Mason finds that Energy Northwest is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Mason's business; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

1. SERVICES

Energy Northwest shall utilize its best efforts to provide Technical Services, as may be required by Mason for the duration of this Agreement, as ordered by Mason, as budget and schedule allow.

Technical Services provided by Energy Northwest shall not conflict or interfere with work conducted by Mason Employees. All services provided under this agreement shall be consistent with applicable and existing Energy Northwest union labor bargaining agreements, which remain unchanged and in effect.

Services shall be requested by the responsible Mason Manager by Work Release Authorizations to Energy Northwest as shown in paragraph 6.5. Work Release Authorizations will be issued using the form provided in Exhibit A to this agreement.

The exact Statement of Work, Period of Performance, Crafts and Labor Rates based on current local bargaining agreements, will be established prior to completion of the Work Release Authorization and agreed upon between the parties, once services have been requested by Mason. These Work Order Release Authorizations shall be incorporated as attachments to this Agreement when finalized, as provided in Exhibit A to this Agreement.

The period of performance for services under this agreement shall be defined in each Work Release Authorization, Exhibit A.

PAYMENT AND INVOICING TERMS

- 2.1 Payment for Services Mason shall pay Energy Northwest as follows:
Charges will be invoiced to Mason by Energy Northwest and will provide detail on the number of hour's chargeable, travel and subsistence charges, and any special services delivered as they are ordered / approved by Mason.
- 2.2 Reimbursable Costs Mason shall reimburse Energy Northwest all costs incurred in connection with the Services rendered, including, but not limited to, travel costs, subcontractors, materials (subcontract and materials costs include the supplier's invoiced cost to Energy Northwest plus Energy Services & Development Overhead charge), computer costs, telephone, copies, delivery that are attributable to a project or Service (the "Reimbursable Costs"). Energy Northwest shall provide to Mason substantiation of Reimbursable Costs incurred. Travel expenses shall be billed per Appendix A.
- 2.3 Invoicing Invoices will be submitted monthly by Energy Northwest for payment by Mason. Payment is due upon receipt and is past due thirty (30) days from receipt of invoice. If Mason has any valid reason for disputing any portion of an invoice, Mason will so notify Energy Northwest within seven (7) calendar days of receipt of invoice by Mason, and if no such notification is given, the invoice will be deemed valid. The portion of an invoice which is not in dispute shall be paid in accordance with the procedures set forth herein. That portion of the invoice in dispute shall be resolved in accordance with Section 6.7 of this Agreement within thirty (30) days of the receipt by Energy Northwest of the notice from Mason as provided in this section.
- Any attorney fees, court costs, or other costs incurred by Energy Northwest in collection of delinquent accounts shall be paid by Mason.
- 2.4 Taxes Mason shall pay all state, local sales and use taxes applicable to goods and services provided under this Agreement. Energy Northwest shall include sales tax charges, separately identified, in the Energy Northwest invoices to Mason.
- 2.5 Prevailing Wages. The Services shall be conducted by Energy Northwest supplemental personnel paid at least prevailing wages, as stated in RCW Title 39.

3. CHANGES

Mason may, with the approval of Energy Northwest, issue written directions within the general scope of any Services to be ordered. Such changes (the "Change Order") may be for additional work or Energy Northwest may be directed to change the direction of the work covered by the Task Order, but no change will be allowed unless agreed to by Energy Northwest in writing.

4. STANDARD OF CARE

Energy Northwest warrants that services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY ENERGY NORTHWEST CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.

5. LIABILITY

5.1 Indemnification. Each Party shall indemnify and save harmless the other Party, 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 of the indemnifying Party, its agents, representatives, or employees, including any and all expense, legal or otherwise, incurred by the indemnified 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 sole negligence of either Party.

5.2 Mason agrees to limit the liability of Energy Northwest for all claims and legal proceedings of any type arising out of or relating to the performance of Services under this Agreement (including but not limited to Energy Northwest's breach of this Agreement, its professional negligence, errors and omissions, and other acts) in an amount not to exceed the total amount of payment received by Energy Northwest for the particular service that gave rise to the claim. Failure of Mason to give written notice to Energy Northwest of any claim within one (1) year of the act or occurrence giving rise to the claim shall constitute a waiver of such claim by Mason. Under no circumstances, shall Energy Northwest be liable for any special, indirect, consequential, lost profits, or punitive damages..

5.3 Remedy Mason's exclusive remedy for any claim relating to this Agreement will

be for Energy Northwest, upon receipt of written notice, either (i) to use commercially reasonable efforts to cure, at its expense, the matter that gave rise to the claim for which Energy Northwest is at fault, or (ii) return to Mason the fees paid by Mason to Energy Northwest for the particular service provided that gave rise to the claim, subject to the limitation contained in Section 5.2. Mason agrees and hereby acknowledges that this remedy is adequate and serves its essential purpose.

5.4 Survival Articles 4 and 5 shall survive the expiration or termination of this Agreement for any reason.

6. MISCELLANEOUS

6.1 Insecurity and Adequate Assurances If reasonable grounds for insecurity arise with respect to Mason 's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of Mason 's ability to meet its payment obligations under this Agreement. Unless Mason provides the assurances in a reasonable time and manner acceptable to Energy Northwest, in addition to any other rights and remedies available, Energy Northwest may partially or totally suspend its performance while awaiting assurances, without liability to Mason.

6.2 Severability Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.

6.3 Waiver Waiver or breach of this Agreement by either party shall not be considered a waiver of any other subsequent breach

6.4 Independent Contractor Energy Northwest is an independent contractor to Mason.

6.5 Notices All notices or other communications hereunder shall be in writing and shall be deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

If to Energy Northwest:
Energy Northwest
Attn: Todd Johnson, M/D 1040
P. O. Box 968
Richland, WA 99352-0968
Telephone: (509) 377-8640

Fax: (509) 377-4357
Email: tnjohnson@energy-northwest.com

If to Mason:
Mason County PUD 1
Attn: Steven N. Taylor, General Manager
N. 21971 Hwy 101
Shelton, WA 98584
Office Phone: (360) 877-5249 X 206

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

6.6 Assignment This Agreement is not assignable or transferable by either party without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

6.7 Disputes Energy Northwest and Mason recognize that disputes arising under this Agreement are best resolved at the working level by the parties directly involved. Both parties are encouraged to be imaginative in designing mechanism and procedures to resolve disputes at this level. Such efforts shall include the referral of any remaining issues in dispute to higher authority within each participating party's organization for resolution. Failing resolution of conflicts at the organizational level, then the parties may take other appropriate action subject to the other terms of this Agreement.

6.8 Section Headings Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

6.9 Representations; Counterparts Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

6.10 Residuals Nothing in this Agreement or elsewhere will prohibit or limit Energy Northwest's ownership and use of ideas, concepts, know-how, methods, models, data, techniques, skill knowledge and experience that were used, developed or gained in connection with this Agreement. Energy Northwest and Mason shall each have the right to use all data collected or generated under this Agreement.

6.11 Nonsolicitation of Employees During and for one (1) year after the term of this Agreement, Utility will not solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent. Similarly, Energy Northwest will not solicit the employment of, or employ Utility's personnel, without Utility's prior written consent.

6.12 Cooperation Mason will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Mason agrees that the Energy Northwest's performance is dependent on Mason's timely and effective cooperation with Energy Northwest. Accordingly, Mason acknowledges that any delay by Mason may result in Energy Northwest being released from an obligation or scheduled deadline or in Mason having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline despite the delay.

6.13 Governing Law and Interpretation. This Agreement will be governed by and construed in accordance with the laws of Washington, without regard to the principles of conflicts of law. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in courts of the State of Washington, in Benton County.

6.14 Entire Agreement; Survival This Agreement, including any Exhibits, states the entire Agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Mason and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto.

6.15 Force Majeure Energy Northwest shall not be responsible for delays or failures (including any delay by Energy Northwest to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

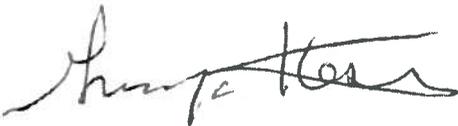
6.16 Use By Third Parties Work performed by Energy Northwest pursuant to this Agreement are only for the purpose intended and may be misleading if used in another context. Mason agrees not to use any documents produced under this Agreement for anything other than the intended purpose without Energy Northwest's written permission. This Agreement shall, therefore, not create any rights or benefits to parties other than to Mason and Energy Northwest.

6.17 Audits: Mason shall, during the life of this Agreement, and for a period of three (3) years from the last day of the Agreement term, and at its sole expense, retain accurate books, records and original documentation (or to the extent approved by Energy Northwest, photographs, microphotographs or other authentic reproductions) which shall be freely disclosed to Energy Northwest, its representatives, the Washington State Auditor, and the Bonneville Power

Administration, to permit verification of performance and Energy Northwest's entitlement to payment under this Agreement, and to support any change requests, termination claims or any other claim submitted by Energy Northwest. A copy of these records shall be available to Energy Northwest upon Energy Northwest's request.

6.18 Public Disclosure: Mason understands that information relating to price and Contract terms and conditions cannot be regarded as proprietary under applicable Washington state statutes relating to public disclosure. Mason further understands that other information submitted to Energy Northwest 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 that any request for disclosure to the public is made for information or data related to this Contract, Energy Northwest shall give Mason notice of the request. In the event Mason wants to contest the disclosure, Mason 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 information or documents as public records. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of information or documents received by Energy Northwest from Mason, all parties shall agree to be bound by such order. Energy Northwest shall not be liable for any inadvertent public disclosure of information despite the exercise of reasonable care.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last below written:

ENERGY NORTHWEST	MASON COUNTY PUD 1
	
Name: Todd Johnson	Name: <u>GREGORY A KESTER</u>
Title: Principal Contracting Officer	Title: <u>Director of Finance</u>
Date: <u>10/16/15</u>	Date: <u>10-16-15</u>

APPENDIX A

A TRAVEL EXPENSES

Energy Northwest will travel to Mason 1. EN personnel will gather data to perform a Community Solar Audit. EN personnel will need certain data items from Mason including potential siting locations for a PV farm, annual revenue basis and Public Utility Tax (PUT) liability to determine eligibility under RCW 82.16.10-30, and information regarding current ratepayers accessing the renewable energy cost recovery program through rooftop solar or other means. EN will then produce an audit determining eligibility for the program, expected allowable PV system size, expected electrical production from a given site, a gross cost estimate for the project and other details.

EN will forego labor costs for this effort and perform the work under its member outreach program. Travel costs will be reimbursable as outlined below.

Meals & Incidentals (M&I): Meal and Incidental expenses are only paid when traveling more than 100 miles each way from point of origin to the designated site. Weekend stay-over(s) are paid when continued work is required during the following week.

Travel In/Out (Meals & Incidentals): For eligible personnel, Mason allows payment of up to 75% of the Federal Per Diem rate for M&I in the County where the service is performed.

Privately Owned Vehicle (POV): Energy Northwest must provide POV mileage (beginning and ending addresses) and any other support documentation as Mason may require for reimbursement. POV mileage shall be reimbursed at the General Services Administration (GSA) mileage rate for privately owned vehicles in effect at the time of travel. Appropriate insurance coverage should be included in the insurance policies.

Rental car: Every effort shall be made to plan required travel to obtain the lowest rates available. Rental car (compact or mid-size) shall be able to transport 1 to 3 personnel directly engaged in performance of the Work. Mason will only reimburse for one rental car per three Energy Northwest personnel. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by Mason. Appropriate insurance coverage should be included in the Contractor's insurance policies. **Actual receipts must document all car rental and fuel costs.**

Lodging: Every effort shall be made to plan required travel to obtain the lowest rates available. Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the General Services Administration (GSA)

rate for the location where the work is being performed. If Energy Northwest employee moves from hotel lodging into residential accommodations earlier than 30 days, the lodging rate will be reduced to \$35/day effective date of establishing residential accommodations. **Actual receipts must document all lodging costs being invoiced under this Contract.**

Air Travel: Every effort shall be made to plan required travel to obtain the lowest fares available. Air travel (at coach class or equivalent), airport shuttles, parking, etc. billed at cost. **Actual receipts must document all air travel costs being invoiced under this Contract.**

Other Expenses: Energy Northwest shall submit to the Technical Representative for **prior written approval**, all proposed "Other" purchases. All other expenses will be based on actual costs and include appropriate documentation. **Actual receipts must document all "other expenses" being invoiced under this Contract.**

B NON-REIMBURSABLE COSTS

- A Non-reimbursable costs include charges for entertainment, first-class airfare, bidding and proposal costs, contributions, personal telephone charges, alcoholic beverages, expenses for transportation for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the provisions of this Contract.
- B Mason will not reimburse travel expenses, nor per diem for non-job related absences e.g. sick time, vacation or personal time.
- C Home visits for less than four (4) consecutive weeks of assignment (on travel status) are not authorized.
- D Restrictions: Mason will not pay travel expenses, hourly rates or per diem for non-job related absences (e.g. sick time, vacation time or for non-job related absences).

Exhibit A


**ENERGY
NORTHWEST**
WORK RELEASE ORDER (WRO)
(FOR USE WITH BLANKET CONTRACTS)

Page _____ of _____

CONTRACT NO.

WORK RELEASE ORDER NO. (MUST BE SHOWN ON ALL INVOICES)

DATE

TO:

UNDER THE PROVISIONS OF THE CONTRACT INDICATED ABOVE, YOU ARE DIRECTED TO PROCEED WITH THE WORK OUTLINED BELOW.
IF FURTHER TECHNICAL INFORMATION IS REQUIRED, PLEASE CONTACT

1.0 SCOPE

2. START DATE:		3. ESTIMATED COMPLETION DATE:	
4. ESTIMATED COST:	TOTAL CONTRACT FUNDING:	COMMITTED TO DATE:	BALANCE:
5. SIGNATURES			
REQUESTER	INITIATING DEPARTMENT'S AUTHORIZED REPRESENTATIVE	CONTRACT ADMINISTRATOR	
6. RECEIPT ACKNOWLEDGED BY CONTRACTOR ON: <i>(Date)</i>	BY:	TITLE:	

- ENERGY NORTHWEST COPY - TO BE RETURNED TO CONTRACT ADMINISTRATOR
- CONTRACTOR COPY