



Agreement for Consulting and Technical Services

Agreement No. X- 40595

This Agreement for Consulting and Technical Services (the "Agreement") is by and between Mason County Public Utility District No. 3 (hereinafter "Client"), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington, acting by and through its Business Development Fund, with its principal office at 3000 George Washington Way, Richland, WA 99352 (hereinafter "Energy Northwest"), collectively referred to as the "Parties" or individually referred to as the "Party."

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

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

WHEREAS, Energy Northwest and the Client have authority to contract for their mutual benefit under the provisions of the "Washington Interlocal Cooperation Act," RCW 39.34, *et seq.*

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

Services to Client. Energy Northwest shall provide Client with Operations and Maintenance Support Services as described in Appendix I, entitled, Options for Coverage of the Mason PUD No. 3 "Olympic View" Generating Plant. The primary purpose of this Agreement is to provide services as described in Appendix I.

Client requests that a back-up to the primary operator be provided to cover times when the Operator is unavailable. This is considered a reimbursable cost per Section 2.2 of this Agreement.

2. PAYMENT AND INVOICING TERMS

2.1. Payment for Services. Client shall pay Energy Northwest in accordance with the Payment Schedule as defined in Appendix I, entitled, Options for Coverage of the Mason PUD No. 3 "Olympic View" Generating Plant. The primary purpose of this Agreement is to provide services as described in Appendix I.

2.2. Reimbursable Costs. Client shall reimburse Energy Northwest all costs incurred in connection with the Services rendered, including, but not limited to, travel costs, subcontractors, training time expended, materials (subcontract and materials costs include the supplier's invoiced cost to Energy Northwest plus Energy Services & Development Overhead charge), computer costs, telephone, copies, and delivery that are attributable to a project or Service (the "Reimbursable Costs"). Energy Northwest shall provide to Client substantiation of Reimbursable Costs incurred.

Travel Costs as identified above, include reasonable and actual direct expenses incurred by Energy Northwest in accordance with Exhibit A, Business Travel. All extraordinary travel expenses must receive Client's approval.

2.3. Invoicing. Energy Northwest will submit invoices monthly for payment by Client. Payment is due upon receipt and is past due thirty (30) days from receipt of invoice. If Client has any valid reason for disputing any portion of an invoice, Client will so notify Energy Northwest within seven (7) calendar days of receipt of invoice by Client, and if no such notification is given, the invoice will be deemed valid. The portion of an invoice that is not in dispute shall be paid in accordance with the procedures set forth herein.

INVOICES NOT PAID WITHIN 30 DAYS FROM RECEIPT OF INVOICE SHALL BE SUBJECT TO A SERVICE CHARGE OF ONE AND ONE-HALF (1 1/2) PERCENT OF THE "UNPAID BALANCE" FOR EACH MONTH THEY REMAIN UNPAID, BUT NOT TO EXCEED THE MAXIMUM AMOUNT PERMITTED BY LAW. Further, if Client is more than thirty (30) days in arrears, Client acknowledges and hereby agrees that Energy Northwest shall have the right to (1) suspend performance of any services provided until all amounts are paid in full or such breach is remedied to Energy Northwest's satisfaction; and (ii) terminate this Agreement. Client shall pay all costs, including attorney's fees, incurred by Energy Northwest in collection of delinquent accounts.

2.4. Taxes. Client shall pay all state and local sales and use taxes applicable to this Agreement or the Services. If Client does not pay such taxes, Energy Northwest may make such payments and Client shall reimburse Energy Northwest for those payments. Client will hold Energy Northwest harmless for any payments made by Client pursuant to this Section 2.3.

2.5. Escalation. Escalation beginning at the start of each new year of this Agreement and annually thereafter if the option for renewal of the Agreement is exercised, including any exercised extensions, shall be at a rate of 3%.

3. CHANGES

Client 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 and specialized skills as may be required in the performance of the requested support, including specific equipment and operating systems associated with the Olympic View Generating facility. In this regard Energy Northwest shall be committed to providing services via a technician trained on Wartsila equipment. Should training be required, Client shall arrange for acceptable training and Energy Northwest shall support said training consistent with mutually agreed upon terms. 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. LIMITATION OF LIABILITY

Client agrees to limit the liability of Energy Northwest, its officers, directors, shareholders, employees, agents and representatives (the "Energy Northwest Parties") to Client 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 the Agreement, its professional negligence, errors and omissions and other acts) to the total amount of payment received by Energy Northwest for the particular service that gave rise to the claim. Failure of Client to give written notice to Energy Northwest of any claim of negligent act, error or omission within one (1) year of performance shall constitute a waiver of such claim by Client. In no event shall Energy Northwest be liable for any indirect, incidental, special or consequential loss or damages of any nature arising at any time from any cause whatsoever. Energy Northwest is solely responsible for performance of this Agreement, and no director, officer, employee, or agent shall have any legal responsibility hereunder, whether in contract or tort, including negligence.

6. INDEMNIFICATION

- 6.1. Energy Northwest shall indemnify, defend and hold harmless Client from any claim, suit, liability, damage, injury, cost or expense, including attorney's fees, or other loss (hereafter collectively called "Loss") arising out of (a) Energy Northwest's breach of this Agreement or (b) Energy Northwest's willful misconduct or negligence in connection with the performance of the Services under this Agreement.
- 6.2. Energy Northwest specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, provided that

Energy Northwest's waiver of immunity by the provisions of this paragraph extends only to claims against Energy Northwest by Client, and does not include or extend to any claims by Energy Northwest's employees directly against Energy Northwest. Energy Northwest further shall indemnify, defend and hold harmless the Client from any and all claim, suit, liability, damage, injury, cost or expense, including attorney's fees or other loss under any workers' compensation acts, disability benefit acts, or other employee benefit acts. The indemnification obligations of this paragraph shall not be limited by a limit on the amount or type of damages, compensation or benefits payable by or for Energy Northwest under Title 51 RCW or any other employee benefits act. Energy Northwest specifically acknowledges that is waiver and indemnification is a MUTUALLY NEGOTIATED AGREEMENT BY THE PARTIES. The limitations of the LIMITATIONS OF LIABILITY Article above shall not apply to this paragraph.

As used in this Article, the term Client includes the Client's commissioners, officers, employees and agents.

- 6.3. Client specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, provided that Client's waiver of immunity by the provisions of this paragraph extends only to claims against Client by employees directly against Client. Client further shall indemnify, defend and hold harmless Energy Northwest from any and all claims, suit, liability, damage, injury, cost or expense, including attorney fees or other loss under any workers' compensation acts, disability benefits acts, or other employee benefit acts. The indemnification obligations of the paragraph shall not be limited by a limit on the amount or type of damages, compensation or benefits payable by or for Client under Title 51 RCW or any other employee benefits acts. Client specifically acknowledges that his waiver and indemnification is a MUTUALLY NEGOTIATED AGREEMENT BY THE PARTIES.

As used in this Article, the term Energy Northwest includes Energy Northwest officers, directors, employees, agents and representatives.

- 6.4. Client agrees to indemnify, defend and hold harmless Energy Northwest from any loss arising out of (a) Client's breach of the Agreement, or (b) Client's willful misconduct or negligence in connection with performance of the Agreement. Client further agrees to indemnify Energy Northwest to the fullest extent permitted by law against any loss arising out of any actual or potential environmental contamination or pollution, including without limitation, any actual or threatened release of toxic or hazardous materials or the failure to detect or properly evaluate the presence of or design and implement remediation of such substances. Client further agrees to indemnify, defend and hold harmless Energy Northwest from any loss in excess of the liability limit set forth in the section titled LIMITATIONS OF LIABILITY and from any indirect, special or consequential loss or damages.
- 6.5. For the purpose of fulfilling this indemnity obligation, Energy Northwest 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. Energy Northwest and Client agree that for actions brought by Energy Northwest's employees where Energy Northwest is the sole defendant, Energy Northwest has not waived its Industrial Insurance Act immunity rights or protections. ENERGY NORTHWEST HEREBY ACKNOWLEDGES THIS INDEMNITY PROVISION WAS MUTUALLY NEGOTIATED AND AGREED TO BY BOTH PARTIES.

7. INSURANCE

Energy Northwest agrees to maintain Commercial General Liability, Automobile Liability, statutory Worker's Compensation and Employers' Liability insurance coverage during the period of performance of services hereunder in the following minimum amounts:

	LIMITS OF LIABILITY
A. Worker's Compensation Employer's Liability	Statutory \$ 1,000,000
B. Commercial General Liability (including Contractual Liability): (Bodily Injury Property Damage)	\$ 1,000,000 combined single limits for each occurrence or aggregate
C. Comprehensive Automobile Liability (Owned, Hired, and Non-owned Vehicles): (Bodily Injury Property Damage)	\$1,000,000 combined single limits for each occurrence or aggregate

At Client's request, insurance certificates will be provided by Energy Northwest as evidence such coverages. To the extent that the cost of this insurance is an added cost to Energy Northwest over and above insurance already carried by Energy Northwest, said costs shall be a pass-through cost to District.

8. CLIENT INSURANCE:

8.1. Client shall secure and maintain in effect during the term hereof property insurance in accordance with the Client's usual practices, including boiler and machinery insurance and other first party property-related insurance coverage, which coverage shall be carried in amounts as deemed necessary by Client during operation of the Facility. The cost of such insurance shall be the responsibility of Client.

8.2. Form and Content.

Policies, binders or interim insurance contracts with respect to insurance maintained under this Article shall:

8.2.1. Name Energy Northwest as an additional insured to the extent of Energy Northwest's interest in the Facility and/or its operations and maintenance activities on behalf of Client

8.2.2. Waive (i) any right of subrogation of the insurers thereunder against Client, Energy Northwest, or additional insureds and the officers, directors, employees, agents and representatives of each of them, and (ii) any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy.

9. SURVIVAL

9.1. Articles 5 and 6 survive the expiration or termination of this Agreement for any reason.

10. MISCELLANEOUS

10.1. Insecurity and Adequate Assurances. If reasonable grounds for insecurity arise with respect to Client's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of Client's ability to meet its payment obligations under this Agreement. Unless Client 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 Client.

10.2. 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.

10.3. Modifications and Waiver. Waiver of breach of this Agreement by either Party shall not be considered a waiver of any other subsequent breach.

10.4. Independent Contractor. Energy Northwest is an independent contractor to Client.

10.5. 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 the Energy Northwest:

Energy Northwest
Attention: Todd Johnson, MD PE-10
P.O. Box 968
Richland, WA 99352

If to Client:

Mason County Public Utility District No. 3
Attention: Annette Creekpau
P.O. Box 2148
Shelton, WA 98584

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.

10.6. Assignment. The 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.

10.7. Termination. In the event of the Client's failure to make timely payment or to comply with any material terms under this Agreement, then Energy Northwest shall have the right to terminate this Agreement for default, in whole or in part. In addition to the remedies expressly set forth in this Agreement, Energy Northwest shall also have the right to seek any and all damages provided by law which have been incurred as a result of the Client's failure to make timely payments, or failure to comply with the material terms and conditions of this Agreement.

Either Party may terminate for convenience, all or part of the Agreement if, in the opinion of that Party, such termination would be in their best interest. For either Party to terminate for convenience, the terminating Party shall be required to issue a sixty (60) day advanced notice of termination. The Agreement shall then be equitably adjusted and modified.

10.8. Disputes. The Parties shall attempt to resolve, subject to the provisions of this Agreement, any dispute under this Agreement by good faith negotiations. If after good faith negotiations, any such dispute continues between the Parties, resolution of such dispute shall be by litigation. Client hereby consents to and stipulates to the personal jurisdiction of the appropriate State or Federal Courts of the State of Washington in any litigation brought in connection with this Agreement.

10.9. 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.

10.10. Representations. 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.

- 10.11. 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 Client shall each have the right to use all data collected or generated under this Agreement.
- 10.12. Non-solicitation of Employees. During and for one (1) year after the term of this Agreement, Client will not solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent.
- 10.13. Cooperation. Client will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that Energy Northwest's performance is dependent on Client's timely and effective cooperation with Energy Northwest. Accordingly, Client acknowledges that any delay by Client may result in Energy Northwest being released from an obligation or scheduled deadline or in Client having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline despite the delay.
- 10.14. Governing Law and Construction. 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 the appropriate State or Federal courts of the State of Washington.
- 10.15. Entire Agreement; Survival. This Agreement, including any Appendices or 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 Client and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the Parties hereto.
- 10.16. 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, and severe weather, and acts or omissions of subcontractors or third parties.
- 10.17. Period of Performance. The period of performance shall commence on October 1, 2015 and end on September 30, 2017, unless terminated sooner under the terms in this agreement. Subsequent two year extensions to this agreement shall be issued in

accordance with provisions entitled, "Options to extend the term of the Agreement" below.

- 10.18. Options to Extend the Term of the Agreement. This agreement may be extended for up to two (2) additional two (2) calendar year extensions (total 4 years). Extensions shall be mutually agreed upon by Mason PUD No. 3 and Energy Northwest and begin on October 1, 2017 and end on September 30, 2021. Each two (2) year extension shall be exercised unless Mason County PUD No. 3 issues written notice to Energy Northwest sixty (60) days prior to the current expiration date.
- 10.19. Audits: Client 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 Client. A copy of these records shall be available to Client upon Client's request.
- 10.20. Public Disclosure: Client 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. Client 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 Client notice of the request. In the event Client wants to contest the disclosure, Client 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 Client, 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 date last written below.

MASON COUNTY PUBLIC UTILITY DIST. NO. 3 ENERGY NORTHWEST

Accepted By: Annette Creeksaun

Name: Annette Creeksaun

Title: Manager

Date: 10.19.2015

Accepted By: Todd Johnson

Todd Johnson
Principal Contracting Officer

Date: 11/3/15

Appendix I

Options for Coverage of the Mason PUD No. 3 "Olympic View" Generating Plant.

Standby Readiness and Maintenance

- Weekly Maintenance and Rotation
- Monthly Run and Synchronization
- Readings/Logs, Inspection and Cleanup
- Monthly Status Report including:
 - Maintenance status
 - Equipment condition
 - Key parameters
 - Off normal parameters
 - Operational readiness
 - Recommendations
- Semi-Annual:
 - Oil analysis (2)
 - Coolant analysis (2)
 - Thermography
 - Vibration analysis

Frequency of Maintenance

- Unless otherwise agreed to by customer, maintenance shall be performed at intervals no less than 5 days and no more than 9 days apart. The intent is 3 weekly performances followed by one monthly performance each month.
- Flexibility relative to time and day of performances is provided to allow for efficient use of resources.

Pricing

- \$4,666.08 per month
- Additional services requested by owner beyond the Standby Readiness and Maintenance tasks identified above will be invoiced at \$103.58/hr. escalated annually.
- Reimbursable costs shall be paid as invoiced and supported by required receipts.

EXHIBIT A
BUSINESS TRAVEL

A TRAVEL EXPENSES

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, Energy Northwest 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 Client may require for reimbursement. POV mileage shall be reimbursed at the US Internal Revenue Service 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. Client 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 Client. 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 Federal Lodging 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 Client Northwest 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: Client 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).