



**INTERAGENCY/INTER-LOCAL AGREEMENT NUMBER
BETWEEN
ENERGY NORTHWEST
AND
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
TO PROVIDE TECHNICAL SERVICES AS REQUESTED**

As provided under RCW Title 39, Chapter 39.34, and Title 54, this Agreement for Technical Services (the "Agreement") is by and between Public Utility District No. 1 of Pend Oreille County, Washington a municipal corporation, with offices located at 130 N. Washington, Newport, WA 99156 (hereinafter referred to as "District or The District"), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington doing business by and through its Business Development Fund, with its principal office at 3000 George Washington Way, Richland, WA 99352 (hereinafter "Energy Northwest, EN or Contractor").

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

WHEREAS, The District finds that Energy Northwest is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of District'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 The District or the duration of this Agreement, as ordered by The District, as budget and schedule allow.

Technical Services provided by Energy Northwest shall not conflict or interfere with work conducted by District 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 District Representative by Work Release Authorizations to Energy Northwest as shown in Section 6.5. Work Release Authorizations will be issued using the form provided in Appendix B to this Agreement.

The exact Statement of Work, Period of Performance, will be established prior to completion of the Work Release Authorization and agreed upon between the parties, once services have

been requested by The District. These Work Order Release Authorizations shall be incorporated as attachments to this Agreement when finalized, as provided in Appendix B to this Agreement.

The period of performance for services under this Agreement shall be defined in each Work Release Authorization, Appendix B.

2. PAYMENT AND INVOICING TERMS

2.1 Payment for Services: District shall pay Energy Northwest as follows: Charges will be invoiced to The District 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 District.

In no event however, shall the total amount paid to Energy Northwest for services and all reimbursable costs exceed the sum of One Thousand Dollars (\$1,000.00) USD unless a Change Order authorizing the same is issued in accordance with Section 3 below.

2.2 Reimbursable Costs: District 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 District 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 District to the attention of:

Public Utility District No. 1
of Pend Oreille County, Washington
Attn: F. Colin Willenbrock
PO Box 190
130 N. Washington
Newport, WA 99156

Payment is due upon receipt and is past due thirty (30) days from receipt of invoice. If District has any valid reason for disputing any portion of an invoice, District will so notify Energy Northwest within seven (7) calendar days of receipt of invoice by District, 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 District 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 District.

2.4 Taxes: District 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 District.

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

District 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 Work Release 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 SOLE AND EXCLUSIVE WARRANTY 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 Limitation: Energy Northwest's liability, including but not limited to District's claims of contributions and indemnification related to third party claims arising out of services rendered by Energy Northwest, and for any losses, injury or damages to persons or properties or work performed under the Agreement, shall be limited to the amount of payment received by Energy Northwest from District for the particular service that gave rise to the claim. Under no circumstances, shall Energy Northwest be liable for any special, indirect, consequential, lost profits, or punitive damages. District agrees to limit Energy Northwest's liability to District and any other third party for any damage on account of any error, omission or negligence to the amount indicated above and District shall indemnify and hold Energy Northwest harmless for any amount in excess of the above agreed to limit. The limitation of liability set forth herein is for any and all matters for which Energy Northwest may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, tort (negligence of whatever degree), strict liability or otherwise.

Energy Northwest's cumulative liability to District under this Agreement is limited to the assets of the Business Development Fund of Energy Northwest. Obligations of the Energy Northwest Business Development Fund are not, nor shall they be construed as, general obligations of Energy Northwest or other Energy Northwest projects or funds.

5.2 Remedy: District'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 District the fees paid by District to Energy Northwest for the particular service provided that gave rise to the claim, subject to the limitation contained

in Section 5.1. District agrees and hereby acknowledges that this remedy is adequate and serves its essential purpose.

5.3 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 District's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of District's ability to meet its payment obligations under this Agreement. Unless District 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 District.

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 The District.

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 The District:

Public Utility District No. 1
of Pend Oreille County, Washington
Attn: F. Colin Willenbrock (General Manager)
P.O. Box 190
Newport, WA 99156
Telephone: (509) 447-6758
Email: cwillenbrock@popud.org

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 The District 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 The District 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, The District 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 The District's personnel, without The District's prior written consent.

6.12 Cooperation: The District will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. The District agrees that the Energy Northwest's performance is dependent on The District's timely and effective cooperation with Energy Northwest. Accordingly, The District acknowledges that any delay by The District may result in Energy Northwest being released from an obligation or scheduled deadline or in The District 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 Appendices, 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 The District 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. District 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 The District and Energy Northwest.

6.17 Audits: District 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: District understands that information relating to price and Agreement terms and conditions cannot be regarded as proprietary under applicable Washington state statutes relating to public disclosure. District 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 Agreement, Energy Northwest shall give District notice of the request. In the event District wants to contest the disclosure, District 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 The District, 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.

7. TERM

This Agreement shall be effective upon execution by all parties and remain in full force and effect until January 31, 2017 and may be terminated earlier by written notice issued to the other party at least thirty (30) days in advance of the date of termination.

8. FILING

The administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, file copies of the Agreement with their respective county auditors or, alternatively, post an electronic copy of the Agreement on the Parties' websites at www.popud.org for The District and www.energy-northwest.com for Energy Northwest.

9. SECURITY

It shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Contractor Security Plan Information which shall be provided to the Contractor prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:



- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Not permit 'Tagging on' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- F. Return all District property, including but not limited to badges, to the District Representative when an individual's access to the facility is no longer needed.

The District reserves the right to conduct criminal background checks on Contractor's employee(s) before granting such individuals access to restricted areas of District facilities. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the District.

10. CONFIDENTIAL INFORMATION

Confidential Information shall be handled by the Parties in accordance with the terms set forth in individual Work Release Authorizations issued by Contractor.

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

ENERGY NORTHWEST	PUBLIC UTILITY DISTRICT NO. 1
	OF PEND OREILLE COUNTY,
	WASHINGTON
	
Name: Todd Johnson	Name: F. Colin Willenbrock
Title: Principal Contracting Officer	Title: General Manager
Date: 2/3/16	Date: 1-28-16

APPENDIX A

A. TRAVEL EXPENSES

EN will forego labor costs for the first forty (40) hours of 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, The District 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 The District 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. District will only reimburse for one rental car per three (3) Energy Northwest personnel. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by District. 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 thirty (30) days, the lodging rate will be reduced to \$35/day effective the date of establishing residential accommodations. **Actual receipts must document all lodging costs being invoiced under this Agreement.**

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 Agreement.**

Other Expenses: Energy Northwest shall submit to the District 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 Agreement.**

B. NON-REIMBURSABLE COSTS

- 1 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 Agreement.
2. District will not reimburse travel expenses, nor per diem for non-job related absences (e.g. sick time, vacation or personal time).
3. Home visits for less than four (4) consecutive weeks of assignment (on travel status) are not authorized.
4. **Restrictions:** District 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).

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

Page 1 of 1

CONTRACT NO. X-40600

WORK RELEASE ORDER NO. 01 (MUST BE SHOWN ON ALL INVOICES)

DATE: 1-28-2016

TO: PUD 1 Pend Oreille County

UNDER THE PROVISIONS OF THE CONTRACT INDICATED ABOVE, YOU ARE DIRECTED TO PROCEED WITH THE WORK OUTLINED BELOW.

SCOPE:

Pend Oreille County PUD has expressed an interest in having Energy Northwest (EN) perform an industrial safety review for their operations. The goal of this review is to 1) assess the existing industrial safety program/procedures and assure they comply with the Washington Administrative Code (WAC) and rules established under the Washington State Industrial Safety and Health Act (WISHA), and 2) review past history of accidents and provide improvement suggestions to the utility to reduce accident risk.

Personnel employed at Pend Oreille PUD by department:

Administration	12
Electric Operations	31
Information Technology	8
Box Canyon Operations	20
Customer Service	10
Regulatory Affairs	9
Engineering	6
Water Systems	3
Community Network System	4
Full-Time Employees	103
On-Call Employees	4
Total Employees	107

Work Scope:

1. Perform a thorough review of the existing Accident Prevention Program and procedures.
2. Provide an Energy Northwest Safety Professional (SP) to perform a site visit to Box Canyon Hydroelectric Project.
3. Identify any deficiencies, or non-compliance issues.
4. Provide recommendation for correcting identified deficiencies.
5. Perform a review of past work related accidents and events at the utility.
6. Provide recommendations for program or procedural improvements.
7. Provide recommendations for periodicity of required and/or desired training on topics covered in the plan.
8. Provide a draft copy of assessment recommendations to the PUD for review and comments.
9. Provide a final summary of assessment recommendations to the PUD.

Client Responsibilities:

Pend Oreille County PUD will provide Energy Northwest access to all industrial safety and environmental documents required for the review. A Pend Oreille County PUD employee, who has knowledge of the safety program, will also be provided as a guide/escort as needed for on-site activities.

2. START DATE: Approximately 02-01-2016

3. ESTIMATED COMPLETION DATE: 03-31-2016

4 ESTIMATED COST, NTE
\$1000.00

TOTAL CONTRACT FUNDING:

COMMITTED TO
DATE:

BALANCE:

5 SIGNATURES

REQUESTER


INITIATING DEPARTMENT'S
AUTHORIZED
REPRESENTATIVE



CONTRACT ADMINISTRATOR

6 RECEIPT ACKNOWLEDGED BY
CONTRACTOR ON: (Date)

TITLE: *Regional Contracting Officer*

ENERGY NORTHWEST COPY - TO BE RETURNED TO CONTRACT ADMINISTRATOR

REQUESTER COPY