



**INTERAGENCY/INTER-LOCAL AGREEMENT NUMBER X-40566  
BETWEEN  
ENERGY NORTHWEST AND  
THE CITY OF BURBANK  
TO PROVIDE TECHNICAL SERVICES AS REQUESTED**

As provided under RCW Title 39, Chapter 39.34, this Agreement for Technical Services (hereinafter referred to as the "Agreement") is by and between the City of Burbank, (hereinafter referred to as "Burbank") a municipal corporation in the State of California, through Burbank Water and Power, the Operating Agent (hereinafter referred to as "BWP"), with offices located 164 West Magnolia Blvd., Burbank CA 91502-1720, 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 P.O. Box 968 Richland, WA 99352 (hereinafter "Energy Northwest" or "EN"), as the parties (each, a "Party", and collectively, the "Parties") to the Agreement.

WHEREAS, the Southern California Public Power Authority ("SCPPA"), a joint powers agency created under California law, has acquired the assets of the Tieton Hydropower Project (hereinafter referred to as "Project") for the purposes of providing those of its members participating in the Project with hydroelectric energy from the Project;

WHEREAS, the cities of Burbank and Glendale are members of SCPPA and have entered into Power Sales and Acquisition Contracts to carry forth the Project;

WHEREAS, Burbank is under a contract with SCPPA, and serves as the Operating Agent for the Project which includes an associated substation and a 115 kV transmission line to the PacifiCorp Tieton Substation (collectively, referred to herein as the "Project") and is authorized to enter into agreements to procure services, materials and equipment to operate and maintain the Project; and

WHEREAS, Benton Rural Electric Association ("BREA") transmits energy over the 115 kV transmission line and provides transmission line operation and maintenance services to SCPPA.

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

WHEREAS, Energy Northwest is willing to perform the work, all relevant factors considered; 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 TO BE PROVIDED BY EN

- 1.1. Energy Northwest shall utilize reasonable commercial efforts to provide Services described on Exhibit A-1 (the "Services"), as may be required by BWP for the duration of this Agreement, as

ordered by BWP, as budget and schedule allow, subject to the terms and conditions of this Agreement.

- 1.2. The Services provided by Energy Northwest shall not conflict or interfere with work conducted by employees of BWP, PacifiCorp, or BREA related to the Project. For this reason, a working foreman shall be assigned at all times to coordinate work assignments directly through the BWP Representative(s). The term "BWP Representative" means one or more persons designated by BWP in writing to serve as the primary point of contact for EN in its performance of this Agreement, as BWP may change from time to time in writing. As an express condition of EN's obligation under this provision, the BWP Representative shall: (a) be responsible for supplying EN with all relevant information including but not limited to copies of relevant agreements, policies and procedures, associated with the work conducted by employees of BWP, and (b) to the extent that the BWP Representative has copies of relevant agreements, policies and procedures associated with work conducted by PacifiCorp or BREA, shall be responsible to supply such documents to EN, in each case, subject to all confidentiality provisions of such documents.
- 1.3. All Services provided under this agreement shall be consistent with applicable and existing EN union bargaining agreements, as may be amended or changed from time to time. Concurrent with the execution of this Agreement, EN shall deliver a true, correct and complete copy of the EN union bargaining agreement in effect as of such date. EN shall promptly deliver copies of any such amendment, modification, supplement or other change to such EN union bargaining agreements to BWP.
- 1.4. Concurrent with the execution of this Agreement, the BWP Representative shall issue to EN a Work Release Authorization, in the form provided in Exhibit A-2 to this Agreement. The Services shall be fully described in the "Scope" section of the Work Release Authorization.
- 1.5. The period of performance of the Work Release Authorization commences on the Effective Date and ends on the first anniversary of the Effective Date (the "Term"). The "Effective Date" means the last date on which either BWP or EN executes this Agreement. BWP shall be entitled to terminate this Agreement in the event that EN: (a) is in breach of its obligations that affect the operations of the Project (an "Operational Breach") and such Operational Breach is not cured within ten (10) days of written notice by BWP to EN setting forth the basis for the alleged breach, (b) is in breach of an obligation that is not an Operational Breach and such breach is not cured within thirty (30) days of written notice by BWP to EN setting forth the basis for the alleged breach, (c) makes a voluntary commencement of any proceeding seeking relief under any bankruptcy, insolvency, reorganization or similar law, or (d) becomes insolvent or is subject to an involuntary petition or any involuntary filing under any bankruptcy, insolvency, reorganization or similar law.
- 1.6. EN shall obtain and maintain all Applicable Permits required or necessary for EN to lawfully perform the Services and otherwise carry out its obligations as contemplated by this Agreement. Upon the request of the BWP Representative, EN shall deliver copies to BWP of all Applicable Permits held or obtained by EN that are required or necessary for the performance of the Services. For purposes of this Agreement, the term "Applicable Permits" shall mean any federal, state, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, waiver, permit or other approval with, from, or of any governmental authority having jurisdiction over the performance of the Services by EN as required under applicable law. For the sake of clarity and avoidance of doubt, nothing in this section shall be interpreted or construed as to require EN to secure or maintain compliance with the Project License issued by the Federal Energy

Regulatory Commission, the Clean Water Act Section 401 Certificate issued by the Washington Department of Ecology and certain licenses and leases issued by the U.S. Bureau of Reclamation and the U.S. Forest Service. However, EN shall become familiar with each of these critical permits and licenses, and shall ensure that EN does not violate the terms of such permits and licenses in the performance of the Services.

- 1.7. EN shall provide and make available, as necessary, all such labor, supervisory and managerial personnel as required to perform the Services (the "EN Personnel"). Such EN Personnel shall be qualified (including possessing appropriate Applicable Permits), experienced and trained in the duties to which they are assigned. EN shall retain sole authority, control and responsibility with respect to labor matters in connection with the performance of the Services. If BWP reasonably deems any EN Personnel as under-qualified, disruptive or non-cooperative, BWP may, by prior written notice, require the removal of such EN Personnel and the replacement of such EN Personnel with a different employee meeting the requirements of this Agreement. In addition, EN shall also consult and confer with BWP and reasonably cooperate to address any concerns raised by BWP with respect to any EN Personnel performing Services under this Agreement. If any person employed by EN appears to BWP to be incompetent or to act in a disorderly or improper manner or who fails to perform the Services in accordance with the terms and conditions of this Agreement, then upon written notice of BWP, EN shall promptly replace, but in any event not later than five (5) days after such written notice, such person at the Project and such person shall not again be allowed to perform any of the Services at the Project. EN shall be allowed to use qualified, competent subcontractors to perform Services under the supervision of EN Personnel; provided, that EN shall deliver prior written notice to BWP of such subcontractors and such notice shall include the identity of the subcontractors, the services to be rendered by such subcontractors and the dates during which such services are to be rendered. EN is responsible for actions taken by subcontractors used to perform Services under contract to EN for the Project, pursuant to Section 7. Project Services in their entirety and without Energy Northwest (EN) oversight shall not be subcontracted by EN.
- 1.8. Except as expressly directed by BWP in writing, EN shall not assume, create or suffer to exist or be created any lien on the Project or any portion thereof. EN shall maintain complete and accurate records of all Services and activities and all material documents and data related thereto (the "Records"), relating to the Project, in a form that allows parts and service records to be accurately tracked by identifiers such as date, part number, repair code, fault code, response time and repair time, as applicable. All Records relating to the Project shall be kept at the Project. BWP shall have the right to inspect and copy such records during normal working hours upon reasonable advance notice to EN.

## 2. PAYMENT AND INVOICING TERMS

### 2.1. Payment for Services.

BWP shall pay Energy Northwest in accordance with Exhibit C, Compensation for Fixed Costs and Reimbursable Costs.

### 2.2. Additional Reimbursable Costs.

- (a) BWP shall reimburse Energy Northwest all reasonable and necessary, documented costs incurred in connection with the Services rendered in execution of the Scope of Services and Standards in Exhibit A-1 of this Agreement related to use of approved subcontractors pursuant to Section 1.4 and 1.7, materials (subcontractors' and materials costs include the supplier's invoiced cost to Energy Northwest plus any applicable Energy Northwest overheads) and delivery costs that are attributable to a project or Service (the "Reimbursable Costs"); provided, however, that the cost of obtaining and maintaining the

insurance coverages, described in Exhibit B, shall not be Reimbursable Costs. Energy Northwest shall provide to BWP complete documentation of Reimbursable Costs incurred.

(b) In the event that BWP submits a Work Release Order (WRO), in the form provided by EN as Exhibit A-2, for the performance of additional work, BWP shall reimburse Energy Northwest all reasonable and necessary, documented costs incurred in connection with such additional Services rendered, including, but not limited to, travel costs, approved subcontractors, materials (subcontractors' and materials costs include the suppliers' invoiced cost to Energy Northwest, plus any applicable Energy Northwest overheads, such as computer costs, telephone, copies, costs of additional insurance specifically required for performance of the additional Services described in the WRO, and delivery costs that are attributable to a project or Service (the "Reimbursable Costs"). Energy Northwest shall provide to BWP complete documentation of Reimbursable Costs incurred.

2.3. Invoicing. Invoices for the preceding month will be submitted on the first day of each month of the Term by Energy Northwest for payment by BWP. Payment is due within thirty (30) days from receipt and is past due after thirty (30) days from receipt of invoice. If BWP has any valid reason for disputing any portion of an invoice, BWP will so notify Energy Northwest within seven (7) calendar days of receipt of invoice by BWP, 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. Any portion of the invoice in dispute shall be resolved in accordance with Section 8.7 of this Agreement within thirty (30) days of the receipt by Energy Northwest of the notice from BWP as provided in this section.

Any reasonable attorney fees, court costs, or other costs incurred by Energy Northwest in collection of delinquent accounts shall be paid by BWP only to the extent that such outstanding amounts are determined to be due EN by a final, non-appealable decision of a court of competent jurisdiction.

2.4. Taxes. BWP shall pay all state, local sales and use taxes applicable to goods and services provided by EN under this Agreement. Energy Northwest shall include sales tax charges, separately identified, in the Energy Northwest invoices to BWP. EN shall be responsible for all state and federal employment taxes, employee benefits, and all workers' compensation obligations, statutory or otherwise required under union agreements, or other employee contracts.

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. OBLIGATIONS OF BWP

3.1. BWP shall be solely responsible for securing and maintaining all Project required Applicable Permits associated with the Project and for maintaining substantial compliance with such Applicable Permits and with Applicable Laws. "Applicable Law(s)" means all applicable and obligatory laws, statutes, ordinances, codes, judgments, decrees, injunctions, writs, orders, permits, approvals, standards, rules, regulations and interpretations (as may be amended, modified or repealed from time to time) of or by any Governmental Authority having jurisdiction over the Project or Project under this Agreement. As used herein, "Governmental Authority" shall mean any federal, state or local government body having jurisdiction over the Project.

3.2. BWP shall provide adequate funding for maintenance and repairs including emergency repairs, capital repairs and necessary improvements or other changes to the Project necessary to maintain

compliance with all Applicable Permits or as may be required by Applicable Laws. EN shall have no obligation to provide funds for any such any repairs, improvements or other changes to the Project, including emergency repairs, and shall be entitled to suspend performance of the Services to be provided hereunder without liability of any kind in the event BWP fails to provide funding for any such repairs, improvements or other changes to the Project including emergency repairs.

#### 4. CHANGE ORDERS

BWP may, with the approval of Energy Northwest, issue written directions for changes within the Scope of any Services ordered. Such changes shall be the subject of a written Change Order signed by BWP and EN ("Change Order") for additional Services or for changes to the direction of the Services covered by the Change Order, but no change will be allowed unless agreed to by Energy Northwest in writing.

#### 5. STANDARD OF CARE

Energy Northwest warrants that all Services shall be performed consistent and in accordance with applicable professional and prudent industry standards relating to hydroelectric facilities, Applicable Laws, this Agreement and the Applicable Project Documents (including any specifications). No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise.

THE FOREGOING SECTION 5 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.

#### 6. PREEXISTING CONDITIONS

To BWP's actual knowledge, the Project will be in good working order, properly maintained in accordance with all manufacturers' maintenance requirements and prudent utility practices applicable to the Project, and in compliance with all Applicable Laws and Applicable Permits, in each case, in all material respects. Notwithstanding any other term or condition of this Agreement, EN shall have no liability of any kind or nature, whether in contract or in tort, at law or in equity, arising out of or relating to any condition of the Project that existed prior to the date EN commenced providing Services, whether known or unknown, knowable or unknowable, or for any violation of any Applicable Law or Applicable Permit (each, an "Existing Condition"). Within sixty (60) days of execution of this Agreement, BWP and EN shall jointly conduct a pre-existing condition inspection, site survey and review of the Project and the Project to identify any Existing Conditions. If following this inspection, BWP and EN becomes aware of any violation of Applicable Law or Applicable Permit, both Parties agree to undertake a mutual investigation and resolution.

#### 7. LIABILITY, INSURANCE AND INDEMNITY

7.1. *Limitation.* Except for the gross negligence or willful misconduct of Energy Northwest, Energy Northwest's total liability, including but not limited to BWP's claims of contributions arising out of services rendered by Energy Northwest, and for any losses, injury or damages to third parties

or third party properties or work performed under the Agreement, shall be limited to the amount of aggregate payment received by or to be paid to Energy Northwest from BWP under this Agreement. Under no circumstances, shall Energy Northwest or BWP be liable for any special, indirect, consequential damages, loss of power or profits, or punitive damages. The limitation of liability set forth in this Section 7.1 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, or in tort resulting from negligence, strict liability or otherwise.

7.2. Remedy. BWP's remedies for any claim relating to this Agreement, upon receipt of written notice to Energy Northwest, shall include, but not be limited to: (a) EN's use of commercially reasonable efforts to cure, at its sole expense, the matter that gave rise to the claim for which Energy Northwest is at fault, or (b) pay BWP up to the full amount of the contract from Energy Northwest for the particular service provided that gave rise to the claim, subject to the limitation contained in Section 7.1

7.3. Indemnity. To the fullest extent allowed under applicable law, and subject only to the limitations provided herein, EN shall defend, indemnify and hold harmless BWP and its officers, and employees, against all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with the Services and work performed or to be performed under this Agreement by EN or EN's agents or employees, for bodily injury or wrongful death to persons and damage to property even though such claims may prove to be groundless or fraudulent. This indemnification is expressly limited to the amount of insurance set forth in Appendix B hereto.

EN HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH EN MAY BE ENTITLED UNDER SUCH EMPLOYEE BENEFITS ACTS (INCLUDING INDEMNIFYING PARTY'S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT RCW TITLE 51. EN ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY EN.

BWP Initials \_\_\_\_\_

Energy Northwest Initials \_\_\_\_\_

NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT IF THE PROVISIONS OF RCW SECTION 4.24.115 ARE DEEMED TO APPLY TO ANY CLAIM FOR INDEMNITY UNDER THIS AGREEMENT (I) IN NO EVENT SHALL EN BE OBLIGATED TO INDEMNIFY ANY PARTY FOR CLAIMS OR DAMAGES ARISING OUT OF BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY RESULTING FROM THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY OR ITS REPRESENTATIVES, AND (II) IF INDEMNIFICATION IS SOUGHT FOR CLAIMS OR DAMAGES ARISING OUT OF BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY RESULTING FROM THE CONCURRENT NEGLIGENCE OF EN AND BWP OR ITS OFFICERS AND EMPLOYEES, EN HEREBY AGREES TO DEFEND AND INDEMNIFY BWP FOR SUCH DAMAGES ONLY TO THE EXTENT OF EN'S OR ANY EN SUBCONTRACTOR NEGLIGENCE.

7.4. Insurance. EN shall comply with the insurance provisions set forth on Exhibit B hereto.

7.5. Survival. Sections 7 and 8 shall survive the expiration or termination of this Agreement for all purposes.

## 8. MISCELLANEOUS

- 8.1. Insecurity and Adequate Assurances. If BWP's Long-Term credit rating drops below Investment Grade, Energy Northwest may demand in writing adequate assurances of BWP's ability to meet its payment obligations under this Agreement. Unless BWP provides the assurances in a reasonable time and manner acceptable to Energy Northwest, in addition to any other rights and remedies available, upon at least seventy-two (72) hours' notice to the BWP Representative, Energy Northwest may partially or totally suspend its performance while awaiting assurances, without liability to BWP.
- 8.2. 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.
- 8.3. Waiver. Waiver of any breach of this Agreement by either Party shall not be considered a waiver of any other subsequent breach or any other term, covenant or condition contained in this Agreement, whether of the same or different character.
- 8.4. Independent Contractor. Energy Northwest is an independent contractor to BWP, and has no authority to act on behalf of, or to represent itself as having such authority on behalf of, BWP. This contract does not establish any agency, partnership or joint venture relationship between the Parties.
- 8.5. Notices. All notices or other communications hereunder shall be in writing or electronic format 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  
Attn: Todd Johnson or Richard Shaff, Procurement, M/D 1040  
P. O. Box 968  
Richland, WA 99352-0968

Telephone: (509) 377-8640  
Fax: (509) 377-4357  
Email: [tjohnson@energy-northwest.com](mailto:tjohnson@energy-northwest.com)

If to BWP:

Burbank Water and Power  
Attn: Jorge Somoano  
Acting General Manager  
164 W. Magnolia Blvd.  
Burbank, CA 91502-1720

Office Phone: (818) 238-3550

And

Burbank Water and Power  
Attn: Ira Joffe  
Power Production Manager  
164 W. Magnolia Blvd.  
Burbank, CA 91502-1720

Office Phone: (818) 238-3760

Any Party may, by notice given in accordance with this Section 8.5 to the other Parties, designate another address or person or entity for receipt of notices hereunder.

- 8.6. 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.
- 8.7. Disputes; Award of Attorneys' Fees and Costs to Prevailing Party. Energy Northwest and BWP 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 mechanisms 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. To the extent such discussions do not resolve such dispute, the Parties agree to submit all claims, disputes or other matters in question between the Parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation. Failing resolution of conflicts at the organizational level, then the Parties may take other appropriate action subject to the other terms of this Agreement. In the event of litigation, the prevailing Party in such action shall be entitled to its reasonable expenses and fees, including its attorneys' fees, any expert fees and costs.
- 8.8. 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.
- 8.9. Representations; Counterparts. Each 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. Each Party hereto represents that this Agreement constitutes its legally, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally, and general equitable principles whether considered in a proceeding in equity or at law.
- 8.10. 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 or developed by EN in connection with this Agreement. Energy Northwest and BWP shall each have the right to use all data collected or generated under this Agreement.
- 8.11. Non-solicitation of Employees. During and for one (1) year after the term of this Agreement, BWP will not affirmatively solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent.
- 8.12. Cooperation. BWP will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. BWP agrees that Energy Northwest's performance is dependent on BWP's timely and effective cooperation with Energy



Northwest. Accordingly, BWP acknowledges that any material delay by BWP may result in Energy Northwest being released from a scheduled deadline or in BWP having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline to the extent such delay by BWP demonstrably causes EN to be delayed and suffer additional costs.

- 8.13. Governing Law and Interpretation. This Agreement will be governed by and construed in accordance with the laws of the State 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.
- 8.14. 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 BWP and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the Parties hereto.
- 8.15. 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 reasonable control; provided, however, that EN: (a) delivers prompt notice to BWP of such events beyond its reasonable control and, (b) uses commercially reasonable efforts to circumvent, remedy or otherwise address such event. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather. In the event of a strike by EN Personnel, BWP shall have the right to substitute another contractor to perform the Services and terminate this Agreement if EN cannot resume performance of the Services within a reasonable time, not to exceed ten (10) days.
- 8.16. Use by Third Parties; Confidentiality. Work performed by Energy Northwest pursuant to this Agreement is only for the purpose intended and may be misleading if used in another context. Neither Energy Northwest nor BWP shall use any documents produced under this Agreement for anything other than the intended purpose without written permission of the other Party. This Agreement shall, therefore, not create any rights in or benefits to Parties other than BWP and Energy Northwest. EN may be granted access to information that is exempt from disclosure to the public (California Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see California Government Code Section 6254.7) when it is necessary for EN to perform its obligations pursuant to this Agreement. If EN is granted such access to confidential information, EN shall not be considered to be a member of the public as that term is used in California Government Code Section 6254.5. EN shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, monitoring results or any other non-public information pertaining to the Work assigned to EN by BWP or other Project information to which the EN has had access during the term of this Agreement, without the prior written approval of the BWP Representative during the term of this Agreement and for a period of two (2) years after the termination of this Agreement. The Parties recognize that EN may receive a request for information including information considered by BWP to amount to a "trade secret" pursuant to the Washington State Public Records Act. To the extent EN receives such a request, EN shall provide BWP with timely written notice of such request, and whether, and on what basis, it intends to disclose the information. If it is determined by EN's legal counsel that a disclosure is legally required in response to a public request, EN shall promptly notify BWP and BWP may choose to approve the release of the information, negotiate protection for the information or seek injunctive or other relief, at the sole expense of BWP, to prevent disclosure of the information proposed to be released. BWP shall hold EN harmless for any costs, including attorneys' fees and statutory

awards, imposed by any court or regulatory authority upon EN for refusal to allow the requesting Party to inspect or copy such information or documents as public records in accordance with BWP's request. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of Proprietary Information or documents received by EN from BWP, the Parties shall agree to be bound by such order. The Parties recognize that BWP may receive a request for information including information considered by EN to be a "trade secret" pursuant to the California Public Records Act. To the extent that BWP receives such a request, BWP shall provide EN with timely written notice of such request, and whether it intends to disclose the information. If it is determined by BWP's legal counsel that a disclosure is legally required in response to a public request, BWP shall promptly notify EN and EN may choose to approve the release of the information, negotiate protection for the information or seek injunctive or other relief, at the sole expense of EN, to prevent disclosure of the information proposed to be released. EN shall hold BWP harmless for any costs, including attorneys' fees and statutory awards, imposed by any court or regulatory authority upon BWP for refusal to allow the requesting Party to inspect or copy such information or documents as public records in accordance with EN's request. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of Proprietary Information or documents received by BWP from EN, the Parties shall agree to be bound by such order.

8.17. Anti-Terrorism; Sanctions. EN represents and warrants that:

- (a) it is not a person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC") or in Section 1 of Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism);
- (b) it does not engage in any dealings or transactions with any such persons described in sub-clause (a) above; and
- (c) is not otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act or any other similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing.

8.18. Renewal. This Agreement will expire in one (1) calendar year from the start date. An option for renewal of this Agreement for a period of one (1) month to one (1) year can be enacted upon mutual agreement of BWP and EN.

EN further agrees to promptly deliver notice to BWP in the event that any of these representations and warranties is no longer true.

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

Energy Northwest

Richard Shaff  
Signature

Richard Shaff  
Name (please print)

Contracts Supervisor  
Title

6/28/16  
Date

Burbank Water and Power

Jorge Somoano  
Signature

Jorge Somoano  
Name (please print)

Acting General Manager, Burbank Water and Power  
Title

6/23/16  
Date

ATTEST:  
Office of the Burbank City Clerk

By: \_\_\_\_\_  
Signature

Zizette Mullins  
Name (please print)

City Clerk  
Title

\_\_\_\_\_  
Date

Approved as to Form  
Office of the Burbank City Attorney

By: Christopher Chwang  
Signature

Christopher Chwang  
Name (please print)

Sr Asst City Atty  
Title

6/17/16  
Date

**Exhibit A-1**

**Work Release Order (WRO) Form**

**(Provided as an attachment citing  
EN Contract Number X-40566 and Work Release Order Numbers 008 & 009 )**

**Exhibit A-2**  
**Blank Work Release Order (WRO) Form**

**(Provided as an attachment)**



**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	
6. RECEIPT ACKNOWLEDGED BY CONTRACTOR ON: (Date)		BY:	TITLE:
_____ CONTRACT ADMINISTRATOR			

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

**Exhibit B**  
**Insurance Coverage**

**Automobile Insurance.** If any EN Personnel uses, or intends to use, a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.

**Workers' Compensation Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance on any employees of EN performing services under this Agreement at the statutory limit.

**General Liability including Property Damage Insurance.** EN shall maintain general liability insurance for bodily injury and property damage insurance in the amount of \$2,000,000.00 combined single limit. When this coverage is required, BWP shall be included as an additional insured on an endorsement to the insurance policy, endorsement form to be included with certificate. The endorsement shall require the insurance company to provide BWP a minimum of ten (10) days notice of the cancellation of the policy.

**Miscellaneous Insurance Requirements.**

**Recovery from EN's Insurance.** EN agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, EN shall look solely to its insurance for recovery.

**Failure to Secure.** If EN, at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, EN shall provide written notice to BWP. If EN fails to cure by securing or maintaining any insurance required under this Agreement within thirty (30) days of receipt of the notice, BWP shall be permitted to obtain such insurance in EN's name or as an agent of EN and shall be compensated by EN for the cost of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to EN as compensation under the terms of this Agreement.

**Additional Insured.** The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy

**Evidence of Insurance.** Upon BWP's request, EN shall furnish true, correct and complete copies of the insurance certificates to the Designated Official or City Attorney's office.

EXHIBIT C  
Compensation for  
Fixed Costs and Reimbursable Costs

**Invoice Submittal - City Of Burbank**

Each invoice shall be sent to the attention of the City of Burbank at the following address:

City of Burbank  
Attn: Ira Joffe  
164 W. Magnolia Blvd  
P.O. Box 631  
Burbank, CA 91503-0631

**Fixed Costs**

Twelve (12) months of Services outlined in Exhibit A-1, invoiced at \$39,342.58 each month for a total annual cost of \$472,111.00.

During months where an additional operator (full time employee) is utilized for training to replace existing personnel, an additional \$1,000.00 per day or a monthly cost of \$20,850 will apply.

**Escalation:** Escalation beginning year two (2) 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% or as mutually negotiated between the Parties.

**Reimbursable Expenses**

Pursuant to Section 2.2(a) and (b) of the agreement, any services in support of this agreement that are outside the fixed cost rate shall be reimbursed in accordance with the following:

The estimated labor and material costs identified below are fully burdened and include a 15% Energy Northwest mark-up.

**Fixed hourly billing rates shall be in US Dollars and includes full cost recovery for all:** i) payroll, payroll taxes, at risk compensation and fringe benefits; ii) per diem and travel expenses; iii) all reproduction and printing costs including electronic media; iv) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; v) computer, software, printers, scanners, office machines and related costs of operations including consumables; vi) insurance costs; vii) indirect and overhead burden; viii) handling service charges; and ix) profit.

All labor costs are based on current bargaining unit labor rates for similar positions within Energy Northwest. Bargaining unit labor rates shown are effective November 7, 2015 which increases annually by different percentages through 2018. The following percentages shall be used for the following years:

- **September 2016 shall increase by 2%**



- **September 2017 shall increase by 2%**
- **September 2018 shall increase by 2.5%**

**Per Diem**

In accordance with U.S. General Services Administration per diem rate schedule. Current daily per diem rate is \$83.00/day per person to cover lodging.

**Travel Allowance**

All reasonable travel costs to be reimbursed by BWP and invoiced by EN, as agreed to in final Agreement terms.

Personnel assigned under this Agreement shall be reimbursed for mileage in accordance with U.S. General Services Administration mileage rate schedule currently at \$0.56 cents per mile.