



**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND CLALLAM COUNTY PUD NO. 1
TO PROVIDE SPECIALTY, TECHNICAL AND/OR PROFESSIONAL SERVICES
AS REQUESTED**

As provided under RCW Title 39, Chapter 39.34, this Agreement for Professional Services (the "Agreement") is by and between PUD No. 1 of Clallam County, a municipal corporation in the State of Washington, with its principal office located at 104 Hooker Road in Sequim, WA 98382, (hereinafter referred to as PUD No. 1) and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington and doing business by and through its Business Development Fund, with its principal office located at 3000 George Washington Way, Richland, WA 99352 (hereinafter referred to as "Energy Northwest" or "EN").

RECITALS

WHEREAS, the Interlocal Cooperation Act contained in RCW 39.34 authorizes local governments, such as the Parties to this Agreement, to contract for joint conduct of activities which each of the parties is individually authorized to perform to make the most efficient use of their respective resources; and

WHEREAS, PUD No. 1 desires to obtain cost effective technical and/or professional services to support the needs of PUD No. 1, as more fully described and set forth in the attached Work Release Order; and

WHEREAS, Energy Northwest has the capacity and is willing to perform certain technical and/or professional services for PUD No. 1 hereinafter described in accordance with the provisions of this Agreement and the attached Work Release Order; and

WHEREAS, PUD No. 1 finds that Energy Northwest is qualified to perform the services, all relevant factors considered, and that such performance will be in furtherance of PUD No. 1'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. AUTHORITY AND PURPOSE

1.1 This agreement is executed pursuant to Chapter 39.34 Revised Code of Washington (RCW) as a cooperative endeavor of the Parties, as follows:

1.1.1. RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

1.1.2. Pursuant to RCW 39.34.080, each Party is authorized to contract with any one or more public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided that such contract shall be authorized by the governing body of each Party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

1.2 The purpose of this Agreement is to establish a contractual relationship under which PUD No. 1 can procure specialty, technical or professional services from Energy Northwest and Energy Northwest can avail its employees for that purpose on an "as needed" basis to support needs of PUD No. 1, and to set forth the Parties respective rights, obligations, costs, and liabilities for this undertaking.

1.4 Filing: This Agreement shall be effective only upon execution by the parties and filing with the Benton County Auditor and/or posting an electronic copy of the Agreement on the Parties' respective websites in compliance with RCW 39.34.040.

2. SCOPE OF WORK

2.1 The "Services" Energy Northwest may provide under this cooperative Agreement include (but are not limited to) the following and will be more fully described in an attached Work Release Order which is incorporated herein and made a part of the Contract Documents:

- Staff Augmentation Services
 - Engineering
 - IT
 - Legal
- Cyber/IT Services
- Safety Consultation Services
- Demand Voltage Reduction
- Demand Response
- Electric vehicle services
- Hydropower Operations and Maintenance Services
- Wind Turbine Operation and Maintenance Services
- Calibration Services
- Strategic Planning
- Project Management

- Environmental Services
- Enterprise Risk Management Services
- Membership Subscription Services (e.g., DEED)
- Human Resources/Recruiting Services

2.2 Services provided by Energy Northwest shall not conflict or interfere with work conducted by PUD No. 1's Employees. For this reason, a working foreman shall be assigned at all times to coordinate work assignments directly through PUD No. 1's Management and/or Supervision where applicable. 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.

2.3 Services shall be requested by PUD No. 1's General Manager (or designee) by Work Release Orders (WRO) to Energy Northwest. WRO's will be issued using the form provided in Exhibit A to this Agreement.

2.4 The exact Statement of Work, Period of Performance, PUD No. 1 Crafts and Labor Rates based on current local bargaining agreements (if applicable), will be established prior to completion of the WRO and agreed upon between the parties, once services have been requested by PUD No. 1. These WRO's shall be incorporated as attachments to this Agreement when finalized, as provided in Exhibit A to this Agreement.

3. TERM

The duration of this Agreement, subject to its other provisions, shall be from its effective date when executed by both Parties, until August 1, 2023 unless otherwise terminated by either Party consistent with the terms and conditions set forth in this Agreement. This Agreement may be extended for an additional one-year term pursuant to the mutual written agreement of the Parties.

4. PAYMENT AND INVOICING TERMS

4.1 Payment for Services PUD No. 1 shall pay Energy Northwest as follows:

Charges will be invoiced to PUD No. 1 by Energy Northwest and will provide detail on the number of hours chargeable, travel and subsistence charges, and any special services delivered as they are ordered/approved by PUD No. 1.

4.2 Reimbursable Costs PUD No. 1 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 PUD No. 1 substantiation of Reimbursable Costs incurred.

4.3 Invoicing Invoices will be submitted monthly by Energy Northwest for payment by PUD No. 1. Payment is due upon receipt and is past due thirty days from receipt of invoice. If PUD No. 1 has any valid reason for disputing any portion of an invoice, PUD No. 1 will so notify Energy Northwest within seven calendar days of receipt of invoice by PUD No. 1, 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 PUD No. 1 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 PUD No. 1.

4.4 Taxes PUD No. 1 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 PUD No. 1.

4.5 Prevailing Wages Where public work will be performed for PUD No. 1, Energy Northwest shall pay the workers at least prevailing wages, as stated in RCW Title 39.12.

5. CHANGES

PUD No. 1 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 WRO, but no change will be allowed unless agreed to by Energy Northwest in writing. Any such approved Change Order may result in an adjustment to Cost or Schedule or both for the Services.

6. STANDARD OF CARE - WARRANTY

Energy Northwest warrants that services shall be performed by personnel possessing competency consistent with applicable industry standards. Such warranty will be effective for a period of thirty days from the date of acceptance of the performance of such service. 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.

PUD No. 1'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 PUD No. 1 the fees paid by PUD No. 1 to Energy Northwest for the particular service provided that gave rise to the claim, subject to the limitation contained in Section 8.2. For the foregoing warranty and remedy to apply, written claim must be made to Energy Northwest as soon as reasonably practicable after the non-conformance is detected by PUD No. 1 and in no event later than the expiration of the aforesaid warranty period. PUD No. 1 agrees and hereby acknowledges that this remedy is adequate and serves its essential purpose.

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.

7. INDEMNIFICATION AND LIABILITY

7.1 Indemnification To the extent of its comparative liability, each party shall indemnify, defend, and hold the other party, its departments, elected and appointed officials, employees, and agents, harmless from and against any and all claims, demands, damages, losses, actions, liabilities, costs, and expenses, including attorney's fees, for any bodily injury, sickness, disease, or death, or any damage or destruction of property, including the loss of use therefrom, which are alleged or proven to be caused in whole or in part by a negligent act or omission of the other party, its officials (elected or appointed), officers, directors, employees and agents.

If the claim, suit or action for injuries, death or damages as provided for in the preceding paragraph is caused by or results from the concurrent negligence of the parties or their respective agents or employees, the indemnity provision shall be valid and enforceable only to the extent of the indemnitor's/indemnitee's negligence.

Industrial Insurance Act: The indemnification obligations contained in this Section 7.1 shall not be limited by any worker's compensation, benefit or disability laws, and each indemnifying party hereby waives any immunity that said indemnifying party may have under the Washington Industrial Insurance Act, Title 51 RCW, and similar worker's compensation, benefit or disability laws. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS AGREEMENT THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES.

7.2 Limitation of Liability. Except for the indemnifications set forth in Section 8.1, neither Party shall be liable for any special, indirect, consequential, lost profits, or punitive damages. The limitation of liability set forth herein is for any and all matters for which the Parties 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, under any warranty, or under any other legal or equitable theory of law, of any nature arising at any time from any cause whatsoever.

PUD No. 1 agrees to limit Energy Northwest's liability to PUD No. 1 for any damage on account of any error, omission or negligence to the amount of payment received by Energy Northwest from PUD No. 1 for the particular service that gave rise to the claim and PUD No. 1 shall indemnify and hold Energy Northwest harmless for any amount in excess of the above agreed to limit. Energy Northwest's cumulative liability to PUD No. 1 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.

7.3 Insurance. Each party shall secure and continuously carry in effect, with an insurance company or companies reasonably acceptable to the other, the following insurance policies:

Each party shall maintain insurance for bodily injury and property damage. Such insurance shall include: provisions or endorsements naming the other party and its elected officials, officers, agents, and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of each party, and that any insurance maintained by the party is excess and not contributory insurance with insurance required hereunder; and provisions or endorsements to include broad form comprehensive liability and blanket contractual liability. Initial limits of liability for all required under this paragraph shall be \$1 Million (\$1,000,000) for each occurrence and \$2 Million (\$2,000,000) general aggregate. Anything in this Agreement notwithstanding, the parties to this Agreement mutually agree to limit the other party's liability for insurable events arising from the performance under this Agreement to the amount of the insurance proceeds available as provided in this Section 8.3.

All insurance policies required hereunder shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior written notice to the other party. Each party shall provide the other with a Certificate of Liability Insurance naming the other, and its elected officials, officers, agents, and employees as additional insureds. It is expressly understood and agreed that is the intention hereof to constitute a waiver and release of any and all subrogation rights which a party may have under any such insurance policies.

7.4 Survival Articles 6 and 7 shall survive the expiration or termination of this Agreement for any reason.

8. MISCELLANEOUS

8.1 Insecurity and Adequate Assurances If reasonable grounds for insecurity arise with respect to PUD No. 1's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of PUD No. 1's ability to meet its payment obligations under this Agreement. Unless PUD No. 1 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 PUD No. 1.

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

8.4 Independent Contractor Energy Northwest is an independent contractor to PUD No. 1; no personnel furnished by Energy Northwest shall be deemed under any circumstances to be the agent, employee or servant of PUD No. 1.

8.5 Termination Any party shall have the right to terminate this Agreement with or without cause at any time during the initial or extended term of this Agreement by giving thirty days' written notice of the termination to the other party by regular mail to the person identified in Section 9.6. Termination will be effective on the 31st day from the date the written notice was sent.

8.6 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:

Attn: Sherri Schwartz
P. O. Box 968, MD1035
Richland, WA 99352-0968
Telephone: (509) 372-5072
Email: SLSSchwartz@energy-northwest.com

If to PUD No. 1 of Clallam County:

Attn: Doug Nass
PO Box 1000
Carlsborg, WA 98324
Office Phone: (360) 565-3230
Email: dougn@clallampud.net

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.

8.7 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.

8.8 Disputes Energy Northwest and PUD No. 1 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.

8.9 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.

8.10 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.

8.11 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 PUD No. 1 shall each have the right to use all data collected or generated under this Agreement.

8.12 Non-solicitation of Employees During and for one year after the term of this Agreement, PUD No. 1 will not solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent.

8.13 Cooperation PUD No. 1 will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. PUD No. 1 agrees that the Energy Northwest's performance is dependent on PUD No. 1's timely and effective cooperation with Energy Northwest. Accordingly, PUD No. 1 acknowledges that any delay by PUD No. 1 may result in Energy Northwest being released from an obligation or scheduled deadline or in PUD No. 1 having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline despite the delay.

8.14 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.

8.15 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 the PUD No. 1 of Clallam County and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto.

8.16 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, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

8.17 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. PUD No. 1 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 PUD No. 1 and Energy Northwest.

8.18 Entity Status This Agreement shall not require formation of any new governance entity. No property will be acquired or held, and no joint board or administrator is necessary to accomplish the purpose of this Agreement.

8.19 Audits PUD No. 1, 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, 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.

8.20 Public Records In the event public record act requests are received by either party for records associated with this Agreement, the parties shall cooperate for purposes of responding to such requests.

8.21 Non-Discrimination The parties agree not to discriminate in the performance of this Agreement on the basis of race, color, national origin, sex, age, religion, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental, or sensory handicap.

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

ENERGY NORTHWEST	PUD NO. 1 OF CLALLAM COUNTY
DocuSigned by: <i>Sherri Schwartz</i>	<i>Doug Nass</i>
Name: Sherri Schwartz	Name: Doug Nass
Title: Procurement Specialist III	Title: General Manager
Date: 7/22/2020	Date: