



**INTERAGENCY/INTER-LOCAL AGREEMENT NUMBER X-40649
BETWEEN
ENERGY NORTHWEST AND THE CITY OF RICHLAND
TO PROVIDE DEMAND VOLTAGE REDUCTION SYSTEM SERVICES**

As provided under RCW Title 39, Chapter 39.34, this Interlocal Agreement for Services (the "Agreement") is by and between The City of Richland in the State of Washington, with offices located at 625 Swift Blvd., Richland, WA 99352 (hereinafter referred to as "CR"), 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").

WHEREAS, CR desires to obtain Demand Voltage Reduction System Services to support the needs of Richland Energy Services; and

WHEREAS, Energy Northwest has the capacity and is willing to perform certain work for CR hereinafter described in accordance with the provisions of this Agreement; and

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

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.

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

This Agreement is executed pursuant to Chapter 39.34 RCW as a cooperative endeavor of the Parties. The purpose of this Agreement is to establish a contractual relationship under which CR can procure Demand Voltage Reduction System Services (Services) from Energy Northwest and Energy Northwest can avail its employees for that purpose to support needs of Richland Energy Services (RES), and to set forth the Parties' respective rights, obligations, costs and liabilities for this undertaking. This Agreement shall be reasonably construed in furtherance of this purpose.

Energy Northwest Responsibilities:

EN shall provide the necessary labor, supervision, materials and equipment for the following Work as requested by City of Richland:

- Initial Software Setup and Configuration
- Assistance with installation and setup of field devices
- Hosting of the Demand Voltage Reduction system on the Energy Northwest Distributed Energy Resource Management System (EN-DERMS)

Deliverables:

- One OpenView User Interface License
- Unlimited read-only web access
- Demand Voltage Reduction for each substation transformer
- Graphical trending and archiving all analog min/max/integral/average values once an hour with online storage for two years

City of Richland Responsibilities:

Purchase and install substation hardware

Provide communications from the substation hardware to the EN-DERMS

2. TERM

The initial term of this Agreement shall commence upon execution by the Parties and filing as set forth in Section 4, and shall be for a period of 1 year unless terminated earlier as provided in Section 10.5 (Termination). Such term may be extended in accordance with Section 3 of this Agreement.

3. EXTENSIONS

The term of this Agreement may be extended from the date that this Agreement was initially executed by mutual written agreement of the Parties and upon the same terms and conditions as set forth in this Agreement. The extension agreement shall be executed at least fifteen (15) days prior to the expiration of the Agreement.

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.

5. PAYMENT AND INVOICING TERMS

5.1 Compensation for the services provide in accordance with this Agreement has been established under the terms of RCW 39.34.130. The fee for providing this Service shall be as per the following:

- a. Initial Software Setup License (up to 1000 SCADA Points) - \$6,000. This is a one-time fee.
- b. Monthly EN-DERMS software and hosting services - \$1,500.00. Subject to an annual escalation based on Energy Northwest increased overhead charges. Actual software and hosting services rate is fixed for three (3) years.
- c. Actual EN labor costs – costs attributed to field hardware installation and integration. Clint Gerkenmeyer - \$157.06 per hour. Subject to annual rate increase(s).

5.2 Payment for Services. Charges will be invoiced to CR by Energy Northwest and will provide detail on the number of chargeable hours, travel, subsistence charges, and any special services delivered as they are ordered/approved by CR.

5.3 Reimbursable Costs. CR 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 CR substantiation of Reimbursable Costs incurred.

5.3 Invoicing. Invoices will be submitted monthly by Energy Northwest for payment by CR. Payment is due upon receipt and is past due thirty (30) days from receipt of invoice. If CR has any valid reason for disputing any portion of an invoice, CR will so notify Energy Northwest within seven (7) calendar days of receipt of invoice by CR, 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 10.8 of this Agreement within thirty (30 days) of the receipt by Energy Northwest of the notice from CR as provided in this section.

5.4 Attorney Fees. Any attorney fees, court costs, or other costs incurred by Energy Northwest in collection of delinquent accounts shall be paid by CR.

5.5 Taxes. CR 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 CR.

6. CHANGES

CR 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 Agreement, 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.

7. STANDARD OF CARE - WARRANTY

7.1 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 30 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

7.2 Remedy. CR'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 CR the fees paid by CR to Energy Northwest for the particular service provided that gave rise to the claim, subject to the limitation contained in Section 8.4. 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 CR and in no event later than the expiration of the aforesaid warranty period. CR agrees and hereby acknowledges that this remedy is adequate and serves its essential purpose.

7.3 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.

8. INDEMNIFICATION AND LIABILITY

8.1 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.

- 8.2 Mutual Indemnify. 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.
- 8.3 Industrial Insurance Act. The indemnification obligations contained in Section 8.1 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.
- 8.4 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.
- 8.5 CR agrees to limit Energy Northwest's liability to CR for any damage on account of any error, omission or negligence to the amount of payment received by Energy Northwest from CR for the particular service that gave rise to the claim and CR shall indemnify and hold Energy Northwest harmless for any amount in excess of the above agreed to limit. Energy Northwest's cumulative liability to CR 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.

9. INSURANCE

- 9.1 Each party shall secure and continuously carry in effect, with an insurance company or solvent risk pool, the following insurance/liability coverage:
- 9.2 Each party shall maintain insurance/liability coverage for bodily injury and property damage. Such insurance/liability coverage shall include 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 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. The parties agree that risk pool coverage that is equivalent to the values identified herein is satisfactory to meet the requirements of this section.

- 9.3 All coverage required hereunder shall not be canceled without thirty (30) days prior written notice to the other party.
- 9.4 Survival. Articles 7 and 8 shall survive the expiration or termination of this Agreement for any reason.

10. MISCELLANEOUS

- 10.1 Insecurity and Adequate Assurances. If reasonable grounds for insecurity arise with respect to CR's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of CR's ability to meet its payment obligations under this Agreement. Unless CR 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 CR.
- 10.2. Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.
- 10.3 Waiver. Waiver or breach of this Agreement by either party shall not be considered a waiver of any other subsequent breach
- 10.4 Independent Contractor. Energy Northwest is an independent contractor to CR. No personnel furnished by Energy Northwest shall be deemed under any circumstances to be the agent, employee or servant of CR.
- 10.5 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 (30) days' written notice of the termination to the other party by regular mail to the person identified in Section 10.6. Termination will be effective on the 31st day from the date the written notice was sent.

10.6 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:	If to City of Richland:
Energy Northwest	City of Richland
Attn: Sherri Schwartz	Attn: Clint Whitney
Principal Contracting Officer	Energy Service Director
P. O. Box 968	625 Swift Blvd. MS-23
Richland, WA 99352-0968	Richland, WA 99352
Telephone: (509) 372-5072	Telephone: (509) 942-7402

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

10.7 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.

10.8 Disputes. Energy Northwest and CR 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.

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

10.10 Representations; 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.

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



- 10.12 Non-solicitation of Employees. During and for one (1) year after the term of this Agreement, CR will not solicit the employment of Energy Northwest's personnel without Energy Northwest's prior written consent.
- 10.13 Cooperation. CR will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. CR agrees that the Energy Northwest's performance is dependent on CR's timely and effective cooperation with Energy Northwest. Accordingly, CR acknowledges that any delay by CR may result in Energy Northwest being released from an obligation or scheduled deadline or in CR having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline despite the delay.
- 10.14 Governing Law and 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.
- 10.15 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 CR and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the Parties hereto.
- 10.16 Force Majeure. Energy Northwest shall not be responsible for delays or failures (including any delay by Energy Northwest to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third Parties.
- 10.17 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. CR 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 CR and Energy Northwest.
- 10.18 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.

10.19 Records Retention. CR shall, at its sole expense and in compliance with the Washington State Archivist's retention schedule, retain accurate books, records and original documentation originated under the Agreement, which information 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 request.

10.20 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; provided, however, that nothing in this Agreement grants either Party thereto the authority to limit or otherwise control the other Party's responses under the Public Records Act. Instead, to the extent that coordinated responses cannot be achieved as contemplated herein, the disclosing Party shall provide written notice to the non-disclosing party of its intent to disclosure responsive records. Such notice shall be sufficiently advanced so as to allow the non-responding Party a meaningful opportunity to seek court intervention prior to release.

10.21 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, creed, 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	CITY OF RICHLAND
	
Name: Sherri Schwartz	Name: Cynthia D. Reents #DK
Title: Principal Contracting Officer	Title: City Manager
Date: 4/30/19	Date: 4/19/19

RESOLUTION NO. 49-19

A RESOLUTION of the City of Richland authorizing an interlocal cooperative agreement with Energy Northwest for Demand Voltage Reduction System services.

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits public agencies to make the most efficient use of their powers by enabling them to cooperate with other localities to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City of Richland desires to obtain Demand Voltage Reduction System services to support the needs of its electric utility to reduce its system peak demand and wholesale energy expenses; and

WHEREAS, Energy Northwest has the capacity and is willing to perform certain work for the City hereinafter described in accordance with the provisions of the proposed interlocal agreement; and

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute an interlocal agreement between the City of Richland and Energy Northwest for Demand Voltage Reduction System services.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 16th day of April, 2019.



ROBERT J. THOMPSON
Mayor

ATTEST:



DEBBY BARHAM, Deputy City Clerk

APPROVED AS TO FORM:



HEATHER KINTZLEY, City Attorney