

**Draft INTERGOVERNMENTAL AGREEMENT
BETWEEN
ENERGY NORTHWEST AND
THE CITY OF PORTLAND
TO PROVIDE SERVICES AS REQUESTED**

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RECITAL

This Intergovernmental Agreement (hereinafter referred to as the “Agreement”) is by and between the City of Portland, a municipal corporation in the State of Oregon, with its principal offices at 1120 SW 5th Avenue, Room 530, Portland, OR 97204, by and through its Bureau of Hydroelectric Power (hereinafter “City of Portland” or “City”), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington, with its principal office at P.O. Box 968 Richland, WA 99352, by and through its Business Development Fund (hereinafter “Energy Northwest” or “EN”), as the parties (each, a “Party,” and collectively, the “Parties”) to the Agreement. This Agreement is authorized pursuant to ORS 190.110.

WHEREAS, the City of Portland owns hydroelectric power generating facilities (hereinafter referred to as “Project”) on the Bull Run River, collectively known as the “Portland Hydroelectric Project” or “PHP”, for the purposes of generating hydroelectric energy; and

WHEREAS, in 1909, Oregon Revised Statute (ORS) 538.420 granted the City of Portland exclusive rights to use waters of the Bull Run River; and

WHEREAS, a Power Sales Agreement entered April 12, 1979 between the City of Portland and Portland General Electric, a privately-owned utility and corporation, provided for the operation and maintenance of the PHP and the sale of its power; and

WHEREAS, said Power Sales Agreement expires upon midnight of August 31, 2017, whereupon Portland General Electric’s performance of Project operations and maintenance will cease; and

WHEREAS, Energy Northwest is authorized, under Revised Code of Washington (RCW) Chapters 43.52, to provide Project operation and maintenance Services to the extent described as “Services” as fully set forth in this Agreement; and

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

WHEREAS, Energy Northwest is willing to perform the Services, all relevant factors considered.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the Parties hereto agree as follows:

1. DEFINITIONS

- 1.1 “Additional Services” is defined in Section 2.2.
- 1.2 “Agreement” means this Intergovernmental Agreement between Energy Northwest and the City of Portland including all Exhibits referenced herein which are hereby incorporated by reference, and as the same may be modified, amended, supplemented or replaced from time to time in accordance with the provisions hereof.
- 1.3 “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 PHP or the Project under this Agreement.
- 1.4 “Applicable Permits” means 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 listed in Exhibit F.

EXHIBIT A

- 1.5 “Applicable Project Documents” means reference materials set forth in Exhibit E.
- 1.6 “Business Development Fund” means the Energy Northwest account entitled as such as of the date of the Effective Date of this Agreement.
- 1.7 “Capital Improvement” means any work designated as such in the CIP approved by the City. Generally, a Capital Improvement boosts an asset’s condition beyond its original or current state. A Capital Improvement increases an asset’s useful function or service capacity, extends its useful life, reduces future operating costs, or upgrades essential parts of the asset. Examples include replacement of governors, or any other major, value-adding improvement.
- 1.8 “Capital Improvement Plan” or “CIP” means a planned schedule and budget for performing work over both the short term (5 years) and a longer timeframe deemed consistent with industry maintenance standards (in relationship to current Project conditions) and the PHP budgetary restrictions.
- 1.9 “Change Request” shall have the meaning given in Section 6.
- 1.10 “City of Portland Representative” means one or more persons designated in Exhibit J (as may be revised from time to time) by City as the primary point of contact for EN in its performance of this Agreement.
- 1.11 “Dams” or “Dam” shall mean Dam #1 and/or Dam #2 owned and operated by the City of Portland Water Bureau on the Bull Run River including all ancillary or supporting structures, piping, valves and other equipment but does not include items within the definition of Project.
- 1.12 “Effective Date” has the meaning given in Section 12.1.
- 1.13 “EN Personnel” has the meaning given in Section 3.12.
- 1.14 “Emergent Event” means an event requiring immediate action to prevent or mitigate harm to human life, property, or the environment.
- 1.15 “Excluded Work” is defined in Section 2.7.
- 1.16 “Fiscal Year” means the period commencing the “Effective Date” of this Agreement and ending twelve (12) midnight on the following June 30. Thereafter “Fiscal Year” means the twelve (12) month period commencing each year at 12:01 a.m. on July 1, and concluding at twelve (12) midnight the following June 30, except that the last Fiscal Year shall end on the date of termination of this Agreement.
- 1.17 “Governmental Authority” means any federal, state or local government body having jurisdiction over PHP or the Project.
- 1.18 “Hazardous Materials” means any material that by reason of its composition or characteristics is hazardous material, including hazardous or toxic substances, hazardous waste, petroleum products (including crude oil or any fraction thereof), or has hazardous constituents, defined or regulated as such in or under Applicable Laws or regulations, relating to or imposing liability or standards of conduct concerning the protection of human health or the environment.
- 1.19 “Incidental Costs” means costs incidental but separate from costs to Operating the Project, including fees for utilities, licenses, permits, consumable supplies, etc., but excluding costs of Capital Improvements.
- 1.20 “Monthly Operating Report” represent a monthly statement of all receipts and disbursements by the Energy Northwest during that month.
- 1.21 “Operate the Project” is defined in Section 2.1.

EXHIBIT A

- 1.22 “Operational Breach” shall have the meaning given in Section 12.2.
- 1.23 “Repair and Maintain” means both routine and preventative maintenance performed to restore the Project’s physical condition and/or operation to a specified standard, prevent further deterioration, replace or substitute a component at the end of its useful life, serve as an immediate but temporary repair, or assess ongoing maintenance requirements.
- 1.24 “Portland Hydroelectric Project” or “PHP” has the meaning given in the Recital.
- 1.25 “Pre-existing Conditions” shall have the meaning given in Section 10 and Exhibit D.
- 1.26 “Project” means, and is limited to, Powerhouses #1 and #2 of Dam #1 and #2, and only those items specified for Services within the Project Site and expressly excludes Dams #1 and #2 and all Dam ancillary or related structures, piping, valves and other equipment, any other facilities, buildings or property unless expressly provided in this Agreement.
- 1.27 “Project Costs” means all costs expended on the Project under this Agreement including, but not limited to, sums payable to EN for Services and sums payable to 3rd parties.
- 1.28 “Project Site” means, and is limited to, the area depicted in Exhibit G.
- 1.29 “Prudent Utility Practice” means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.
- 1.30 “Services” means service and/or goods provided by EN under this Agreement.
- 1.31 “Term” means the period of time given in Section 12.1.
- 1.32 “Unsafe Condition” means a condition at the Project Site or affecting the Project Site that would appear to a reasonable plant operator to unreasonably compromise safety of persons at the Site or unreasonably endanger the Project or other property located at the Project Site.
- 1.33 “Work Release Order” or “WRO” means the form or document used to authorize services, amend services or add additional services associated to a WRO. A WRO shall include the scope, schedule (including any operational outage or curtailment periods), budget and outside contractor’s estimate (where applicable), for the services or additional services to be completed, and shall reference the source of funding in the authorized annual budget. WRO shall also include the payment terms for the services or additional services authorized within the WRO.

2. SERVICES TO BE PROVIDED BY ENERGY NORTHWEST

- 2.1. Project Operation. Energy Northwest shall operate and maintain the Project on City’s behalf. “Operate the Project” means doing all things (directly or with contracted services) required to ensure the safe and reliable operation of the Project, in accordance with requirements and limitations set forth herein, subject to Applicable Laws, Applicable Permits, Prudent Utility Practices and, when EN Operates the Project with contracted services, in compliance with EN’s procurement requirements. The Parties herein agree permits and licenses applicable to the Project include those identified in Exhibit F as of the date of this Agreement and shall be referred to as “Applicable Permits.” Energy Northwest’s provision of Services or Additional Services herein shall not knowingly or intentionally violate such Applicable Permits. Operate the Project includes all activities typically undertaken to Repair and Maintain a hydroelectric project similar

to the PHP including, but not necessarily limited to, the tasks and responsibilities set forth in each WRO. Operate the Project does not include performing Capital Improvements or Excluded Work. EN shall utilize reasonable commercial efforts and the “Applicable Projects Documents” as a guide, to provide only the Services described on Exhibit A-1, or as may be requested by the City for each Fiscal Year of the duration of this Agreement, and/or via written order of the City, as budget and schedule allow, subject to the terms and conditions of this Agreement. The Services provided by EN shall not conflict or interfere with work conducted by employees of the City related to the Project. The City of Portland Representative shall: (a) be responsible for supplying EN at least two (2) calendar days in advance, except in response to an “emergent event,” with all relevant information including but not limited to copies of relevant agreements, policies and procedures, associated with the work to be conducted by employees of the City on the Project, the Dams, transmission lines and facilities, or any other ancillary or related structures, piping, valves and other equipment, any other facilities, buildings or property that may or does affect the operations or maintenance of the Project, subject to all confidentiality provisions of such documents

- 2.2. Additional Services. Upon prior approval of the City’s approving authority, EN may provide additional services to the City including Capital Improvements. EN’s additional services shall be priced in accordance with rates and terms in the WRO for the identified services. Work not performed by EN will be performed by third parties under contract directly to City (prepared and administered by EN in accordance with Section 2.1).
- 2.3. Annual Budget and Annual Maintenance Schedule. EN’s scope of work in Section 2.1 includes:
 - 2.3.1. Annual Budget. EN shall prepare and submit an Annual Budget by December 1st of each year, covering the following Fiscal Year (July 1st through June 30) during the Term. The annual budget shall include an estimate of all Project costs inclusive of all costs necessary to operate the Project, incidental costs, and the cost of all Capital Improvements scheduled for the Fiscal Year, whether performed as additional work or contracted to a third party.
 - 2.3.2. Annual Maintenance Schedule. EN shall prepare and submit to the City an Annual Maintenance Schedule by August 15th of each year, covering the following calendar year (January 1st through December 31st) during the term of this Agreement. The Annual Maintenance Schedule shall include an estimate of all Project timelines for the coming year with a specific emphasis on the dates which require generator outages. Consistent with Prudent Utility Practice, EN shall attempt to schedule generator outages during periods of low flow or otherwise in deference to the scheduling wishes of City. The Annual Maintenance Schedule shall be consistent with the Annual Budget.
 - 2.3.3. Total/Annual Amount of Agreement. The total not to exceed amount of the Agreement is \$10,000,000. An annual amount of \$2,000,000 is allocated by the City for services under this Agreement. Term of this Agreement is 5-years. Upon approval by City Council via Ordinance, the City will begin issuing Work Release Orders for the services required by EN for this Project.
- 2.4. Work Release Orders. Except as otherwise provided herein, City will use WROs to authorize all EN Services. Concurrent with the execution of this Agreement, the City will execute (and EN shall acknowledge) WRO(s) in the form substantially in accordance with the attached Exhibit A-2. Future EN work authorizations will occur through additional WROs. The City’s and EN’s approving authorities shall approve and sign all WRO’s associated with this Agreement.
- 2.5. Unauthorized Services; Emergent Events. In the event EN provides services that are required by Prudent Utility Practice (e.g. to prevent an Emergent Event) but are not part of Operating the Project, EN shall perform such services and, if performing such services materially increases EN’s costs to provide service, shall invoice City for EN’s additional costs, in accordance with

Exhibit C, invoice shall include a justification for the incurred costs; provided, that EN shall promptly notify City prior to incurring such costs so that City shall have the ability to explore alternatives that will not cause EN to incur additional costs. Appropriate City Procurement and authorized agent's approval of both parties is required.

- 2.6. Excluded Work. For the avoidance of doubt, the following areas and tasks are not within the scope of EN's authority or responsibility under this Agreement:
- 2.6.1. Operation of Dam #1, Dam #2, or the City's water intake below Dam #2;
 - 2.6.2. Water quality testing;
 - 2.6.3. Costs arising from contracts between the City and a professional engineer, consultant, or other contractor providing service to the City in connection with the Project;
 - 2.6.4. Costs for materials procured by City to be applied or consumed at the Project (except as otherwise included in Exhibit A);
 - 2.6.5. Identification or abatement of asbestos or lead paint conditions, if any;
 - 2.6.6. Creating or incurring any liability or obligation on behalf of City except as expressly authorized by City or as expressly set forth herein;
 - 2.6.7. Settling, compromising, assigning, releasing or transferring any claim, suit or demand, whether brought by or against City or otherwise involving the Project; or
 - 2.6.8. Taking any action on behalf of the Project that would result in a pledge, mortgage, license, conveyance or other transfer or disposition of any property or assets of the Project except for actions in the ordinary course of business.

3. TERMS AND CONDITIONS OF EN's SERVICES

- 3.1. Cost Estimates in Annual Budget. When preparing the Annual Budget, EN shall utilize cost estimates in the Capital Improvement Plan, updated for inflation and other factors if warranted. For costs not in the Capital Improvement Plan, EN shall use the best available information including historic costs, if available.
- 3.2. Diligence Prior to subcontracting for services that support this Agreement. EN, a Joint Operating Agency, operates under Washington state laws and has accountability for how business is conducted and how state and ratepayer monies are expended. EN shall comply with the appropriate procurement policies, state and federal requirements for all work associated to this Agreement.
- 3.3. Emergency Notification. EN shall provide City with 24/7 contact information such that a designated City of Portland Representative can reach EN if needed at all times.
- 3.4. EN and City Coordination. EN shall not unreasonably interfere with activity conducted by City related to the Project. EN shall provide City reasonable notice, including by electronic mail, of any plans to limit access within the Project Site or undertake activities that may affect normal operation of the Project.
- 3.5. Applicable Project Documents. EN shall familiarize itself with Applicable Project Documents so as to improve its working knowledge of the Project and to avoid unnecessary loss of Project knowledge or re-creation of existing information.
- 3.6. Bull Run Watershed Operating Procedures. EN shall comply with City of Portland standard operating procedures covering work in the Bull Run Watershed, set forth in Exhibit H, as may be created or modified from time to time. The City will provide copies of new and revised policies as they become available.

- 3.7. City Security Standards. EN's employees, agents, and subcontractors shall obtain Portland Water Bureau security clearance prior to working at the Project Site and shall comply with City of Portland security standards, available from the City of Portland Representative.
- 3.8. Non-Hazardous Waste Management. EN shall be responsible for supervising the Project Site solid waste management collection and deposit into City-furnished receptacles all solid waste materials generated in the performance of Services herein. When EN supervised work at the Project will result in substantial added solid waste disposal charges, EN shall include the incremental disposal costs in the Annual Budget. The City shall be responsible for the provision of waste management containers and the disposal, and costs thereto, of all waste materials generated by or in connection with the performance of the Services herein.
- 3.9. Security. EN shall take reasonable steps to prevent theft and vandalism at and within the Project Site including utilizing physical security measures provided by City.
- 3.10. Emergency Action Plans. EN's employees, agents, and subcontractors shall be familiar and comply with the City of Portland Bull Run Reservoir Emergency Action Plan, the Hazardous Materials Control Plan, and the Oil Spill Prevention and Countermeasures Plan.
- 3.11. Emergency Call-out. EN shall ensure that a qualified person reports to the Project Site within ____ hours of being notified by City or local law enforcement of a condition requiring immediate attention.
- 3.12. EN Personnel. 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 licensures and/or certifications), 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 City reasonably deems any EN Personnel as under-qualified, disruptive or non-cooperative, City 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 City and reasonably cooperate to address any concerns raised by City with respect to any EN Personnel performing Services under this Agreement. If any person employed by EN appears to City 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 City, 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 City of such subcontractors and such notice shall include the identity of the subcontractors; the services to be rendered by such subcontractors; the dates during which such services are to be rendered; and a statement that the subcontractor's insurance meets the same insurance requirements as EN, set forth in Exhibit B, and that the subcontractor named the City as an additional insured. EN is responsible for actions taken by subcontractors used to perform Services under contract to EN for the Project, pursuant to Section 8.
- 3.13. Communications With Agencies. Operating the Project requires periodic communication with various city, state, and federal agencies, including without limitation the Federal Energy Regulatory Commission, the United States Forest Service, the Oregon Department of Fish and Wildlife, the Oregon Water Resources Department, the Portland Water Bureau, and any insurance carrier that issued a policy related to the Project. The City and EN will attempt to coordinate all communications with these agencies under the City's direction. EN shall participate in meetings with these agencies when requested and generally is encouraged to attend when its work schedule

allows. EN may contact agencies without prior City approval pursuant to any established protocol or as otherwise reasonably necessary due to an Emergent Event or other matter if Prudent Utility Practices so requires and the information to be communicated involves imminent danger arising from a significant safety problem; provided that the communication means is not otherwise covered by the “City of Portland Bureau of Hydroelectric Power Emergency Action Plan” if the provisions of the Plan are being followed as to the particular situation; and further provided that EN has made reasonable efforts to contact the City and have the City provide the communication and either EN has been unable to contact appropriate City personnel or the City has failed to provide the communication. The City may require that it be present at and be provided with copies of all communications with EN with these agencies except as to any oral imminent danger communications referred to above. Upon request by EN the City shall provide EN with copies of all written communications between the City and these agencies.

3.14. Recordkeeping. 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 are the property of the City of Portland and shall be kept at the Project by Energy Northwest with digital copies available upon request by the City, in a format acceptable to the City. All Records shall be retained in accordance with applicable City of Portland Retention Schedules and any public records request shall be processed under Oregon law. City of Portland shall have the right to inspect and copy such records during normal working hours upon reasonable advance notice to EN.

3.15. Suspension of Services. EN shall have the right to suspend performance due to:

3.15.1. Unsafe Conditions. EN shall have the right to suspend all or part of Services as warranted to avoid Unsafe Conditions. Upon encountering a condition necessitating the suspension of Services, EN shall immediately notify City and not resume performance of such until the condition is rectified to the satisfaction of the Parties. In the event of an unsafe condition Energy Northwest shall be permitted to take action in an effort to prevent, or mitigate as much as practicable, threatened damage, injury, or loss. If Energy Northwest’s provision of Services or Additional Services conforms to the Standard of Care set forth in Section 6 herein Energy Northwest shall be entitled to a WRO for any increased costs reasonably incurred and scheduling delays resulting from its action in responding to an unsafe condition.

3.15.2. Adverse Change to an Applicable Permit. Should any Applicable Permit(s) necessary to the lawful operation of the Project become suspended or revoked, the City of Portland shall notify EN within two (2) calendar days in accordance with Section 13.8 herein this Agreement. To the extent the aforementioned prohibits or limits by operation of law or regulation EN’s provision of Services the Parties hereby agree that EN may in its sole discretion cease the provision of such without any liability until such legal or regulatory prohibition or limitation is negated.

3.16. Threatened Release of Hazardous Materials. In the event EN encounters any threatened release of, or threatened exposure to, Hazardous Materials at the Project or Project Site (including but not limited to asbestos and lead paint), EN may immediately stop any work likely to result in a release of or exposure to such materials and shall not be obligated to resume work in the area affected until the condition is removed or abated by the City. EN shall where reasonable notify the City and receive direction, and if such direction is not provided or cannot be provided in a timely fashion, shall take action in an effort to prevent, or mitigate as much as practicable, threatened damage, injury, or loss in accordance with Prudent Utility Practices.

- 3.17. Accounting, Audit Rights. EN shall keep and maintain books, records, accounts and other documents sufficient to reflect accurately and completely all Project Costs incurred pursuant to this Agreement and any other costs which are the basis of a payment hereunder. Such records shall include receipts, memoranda, vouchers, inventories, and accounts of every kind and nature pertaining to the goods and services, as well as complete copies of all contracts, purchase orders, service agreements and other such agreements entered into in connection therewith. City, its designees, and any independent auditor appointed by City shall have access, upon reasonable advance notice in writing, to all such records maintained by EN, for the purposes of auditing and verifying Project Costs or any other costs or expenses claimed to be due and payable hereunder. Such parties shall have the right to reproduce any such records at their expense, and EN shall keep and preserve all such records for a period of at least three (3) years from and after the close of the Calendar Year in which such Project Costs were incurred. EN shall keep records of partial releases of mechanics liens and materialman liens, if any.

4. OBLIGATIONS OF CITY

- 4.1. Payment for Services. The City shall pay EN all sums to which it is entitled under the terms and conditions of this Agreement, including Additional Services, if any, which are: (a) agreed to in advance; or (b) otherwise authorized in this Agreement.
- 4.2. Emergency Notification. The City shall provide EN with 24/7 contact information such that a designated City of Portland Representative can be reached by EN if needed at all times.
- 4.3. EN and City Coordination. City shall not unreasonably interfere with work conducted by EN related to the Project. City shall provide EN reasonable notice, including by electronic mail, of any plans to limit access within the Project Site or undertake activities that may affect normal operation of the Project.
- 4.4. Project Tools and Supplies. The City shall provide the project supplies and project tools set forth in Exhibit I, which shall remain the property of City.
- 4.5. On-Site Storage. City shall provide Energy Northwest use at no cost of the existing storage facility adjacent to Powerhouse #2 suitable for storing spare parts, tools, and equipment necessary to perform the Services.
- 4.6. Project Site Fuel Storage and Use. The City shall be responsible for the provision, maintenance and control of storage facilities including containments for gasoline and diesel fuels, oils, or other liquid or combustible fuels on the Project Site. EN's use of such fuels for Services shall be limited to instances of written permission from the City.
- 4.7. Procuring Applicable Permits. Unless otherwise required by Applicable Law, City (with the "cooperation and support of EN" where necessary) shall be solely responsible for renewing all PHP and Project required Applicable Permits. For purposes of this Agreement, the term "cooperation and support of EN" shall only mean provision of information and records required to maintain or renew Applicable Permits.
- 4.8. Regulatory and Governmental Fees. City shall pay any regulatory fees chargeable to the owner of the Project, except in the case of negligence or misconduct by EN
- 4.9. Dam Safety Matters. City shall be responsible for dam safety at Dam #1 and Dam #2. However, City will permit EN to participate fully (without additional compensation unless otherwise agreed) in the following activities involving dam safety matters:
- (a) Accompanying the selected regulatory or consulting inspectors on all field dam safety inspections of PHP;

- (b) Review and comment upon, and discussion with the dam safety inspector concerning, all of the inspector's determinations before they become final;
 - (c) Discussions with the dam safety inspector of all recommendations for remedial actions or additional inspections to be included in the inspector's reports before such are final; and
 - (d) Determining how the inspector's recommendations, if any, should be implemented.
- 4.10. Funding of Services. City shall provide funding for Project maintenance and repairs including emergency repairs, capital repairs and necessary improvements or other changes to the Project in amounts sufficient to maintain compliance with all Applicable Permits or as may be required by Applicable Laws or meet industry safety standards. EN shall have no obligation to provide funds for 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 (upon reasonable notice and subject to EN's obligations under Section 8 of this Agreement) without liability of any kind in the event City fails to provide funding for any such repairs, improvements or other changes to the Project including emergency repairs.
- 4.11. Taxes. City shall pay all taxes applicable to its receipt of goods and services from EN under this Agreement and all property, value added and transactional taxes. EN shall include sales tax charges, separately identified, in the EN invoices to City if applicable. EN shall only be responsible for taxes applicable to its provision of Services herein which may include, state and federal employment taxes, State of Oregon excise taxes and payroll taxes relative only to Services in Oregon, and State of Washington business and occupation taxes.
- 4.12. Emergency Action Plans. The City shall provide an emergency action plan, hazardous materials control plan, oil spill prevention and countermeasures plan, and any other plans as required by law or regulation applicable to both an owner and operator to govern the Project Site and EN's Project Services.
- 4.13. City Records. City shall maintain complete and accurate records of all costs, accounts, and activities and all material documents and data related thereto in connection with the Project and make copies of such available to EN upon request. City shall during the life of this Agreement and for a period of three (3) years after expiration or termination of this Agreement and at its sole expense maintain the aforementioned records which shall be disclosed in accordance with the terms of this Agreement to the Washington or Oregon State Auditors to permit verification of performance and entitlement to any payments under this Agreement.

5. AMENDMENT/CHANGE REQUESTS

- 5.1. Amendments to the Agreement. The City and EN may amend this Agreement at any time only by written amendment executed by the City and EN. The City's Water Bureau Administrator, upon approval by City Council, is authorized to approve amendments for City to this Agreement that do not increase the total Agreement amount above 25% of the original Agreement amount. EN shall submit a written request to the City's designee prior to any amendments to the Agreement. Any amendment to the Agreement shall require the signature of both parties' approving authorities. Amendments increasing the total Agreement amount above 25% of the original Agreement amount shall require approval of City Council for every increase.
- 5.2. Change Requests to WRO. City may, with the agreement of EN, issue written directions for changes to work or additional services ordered through an approved WRO that do not exceed the annual Agreement not-to-exceed amount. Such changes shall be the subject of a written change request which will result in an amendment to a WRO signed by City's and EN's approving authority.

EN shall submit in writing to the City claims for changes to the services or additional services, associated to a WRO, but no change shall be authorized unless agreed to by City in writing unless said change is related to EN's recovery of costs specifically provided for elsewhere in this Agreement. Claims of changes to the services or additional services must be made and agreed to with the City prior to the performance of the work. Changes that have been agreed to shall be documented in a WRO amendment.

Notwithstanding the conditions in the previous paragraph, so long as EN's provision of services conforms to the Standard of Care set forth in Section 8, EN shall be entitled to a WRO amendment for EN's materially increased reasonable costs resulting from:

- (a) Unforeseeable regulatory burdens (including but not limited to audits, investigations, and remedial actions) materially increasing EN's costs to operate the Project;
- (b) After-hours operations required by City or by Prudent Utility Practice and not accounted for in Exhibit A;
- (c) Suspension of services under Section 3.15; and
- (d) Unauthorized services necessary to prevent or minimize Emergent Events per Section 2.6.

6. COMPENSATION AND BILLING PROCEDURES

- 6.1. The City's policy is to pay its invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, EN shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at <http://www.portlandoregon.gov/bfs/article/409834?>

Upon verification of the data provided, the Payment Authorization Agreement shall authorize the City to deposit payment for services rendered directly into EN's accounts with financial institutions. All payments shall be in United States currency. Payment of any invoice, however, does not preclude the Collaborator from later determining that an error in payment was made and from withholding the disputed sum from the next monthly payment until the dispute is resolved.

The City has the authority to audit the EN's records associated with this Agreement. EN shall fully cooperate with a City Audit of the records at any time. The City reserves the right to request additional documentation to support EN's expenditure of funds complied with the Agreement and on the progress of work, services, or actions required from EN.

EN shall also fully cooperate with an audit to account for all expenses if necessary.

In the event this Agreement is terminated pursuant to all unexpended funds shall be returned to the City within 60 days of said termination.

Payments under this Agreement may be used only to provide the services or take the actions required under this Agreement and shall not be used for any other purpose.

If applicable, EN shall keep vendor receipts and evidence of payment for materials and services, time records, payment for program wages/salaries and benefits. All receipts and evidence of payments shall be promptly made available to the City Project Manager or other designated persons, upon request. At a minimum, such records shall be made available and may be reviewed as part of the annual monitoring process. EN shall be required to cooperate with a City audit of all expenses at any time.

- 6.2. Invoices submitted by EN to the City shall only be submitted to the Portland Water Bureau Finance Office electronically.

Email address is as follows: wbaps@portlandoregon.gov

EN shall submit an invoice for all work for the preceding month no later than the 15th calendar day of each month. The invoice shall list separately amounts authorized by: (a) EN's Annual Maintenance and Maintenance Management Cost; (b) fixed-price WROs; and (c) cost-based WROs.

- 6.2.1. EN's Annual Maintenance and Maintenance Management Cost. EN shall invoice 1/12 of the approved EN Annual Maintenance and Maintenance Management cost each calendar month.
- 6.2.2. Fixed-price WROs. EN shall invoice against fixed-price WROs, if any, based on a payment schedule, or based upon percentage of completion of the work authorized by the WRO.
- 6.2.3. Cost-based WROs. EN shall invoice against variable cost WROs, if any, and shall include an itemization of EN's actual costs, including in-directs, overheads, and profit as authorized in Exhibit C. EN shall state in the invoice the percentage of each task that has been completed at the end of the billing period.

All invoices shall include the City's Agreement number, the City Project Manage, WRO number, WRO scope of work/project title and the following statement bearing the name of EN's representative who approved the invoice: "By submitting this invoice to City, [EN representative] certifies that, to the best of his or her knowledge EN is entitled to the payment requested under the terms and conditions of their Agreement." Separate invoices shall be submitted by EN for each WRO.

Travel - Travel shall be allowed only when the travel is essential to the discharge of Energy Northwest's responsibilities under the Agreement. All travel and lodging shall be conducted in the most efficient and cost-effective manner resulting in the best value to the City. Reimbursable direct costs include pre-approved travel beyond a 225-mile radius from the Project. Personal expenses shall not be authorized at any time. Alcohol is not an authorized purchase under this Agreement. Travel costs shall be reimbursed in accordance with the City's or Energy Northwest's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates. Upon submitting invoices which indicate travel Energy Northwest shall provide all travel receipts for any items being requested for reimbursement (other than on a per diem basis). All receipts shall indicate the company that payment was made to, detail describing the type of services purchased and the total amount paid initially by Energy Northwest. All requests shall be in accordance with the limits of travel reimbursement. When submitting invoices and travel has been authorized and conducted by Energy Northwest a separate line item shall be identified on the invoice.

Standard Reimbursable Costs - The following costs shall be reimbursed without mark-up. Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Energy Northwest's own use.

Subconsultant Costs. Compensation for subcontractors shall be limited to the same restrictions imposed on the Energy Northwest. The maximum markup on subconsultant services shall not exceed 5%.

The City has the authority to audit the EN's records associated with this Agreement. EN shall fully cooperate with a City Audit of the records at any time. The City reserves the right to request additional documentation to support EN's expenditure of funds complied with the Agreement and on the progress of work, services, or actions required from EN.

EN shall also fully cooperate with an audit to account for all expenses if necessary.

In the event this Agreement is terminated pursuant to all unexpended funds shall be returned to the City within 60 days of said termination.

Payments under this Agreement may be used only to provide the services or take the actions required under this Agreement and shall not be used for any other purpose.

If applicable, EN shall keep vendor receipts and evidence of payment for materials and services, time records, payment for program wages/salaries and benefits. All receipts and evidence of payments shall be promptly made available to the City Project Manager or other designated persons, upon request. At a minimum, such records shall be made available and may be reviewed as part of the annual monitoring process. EN shall be required to cooperate with a City audit of all expenses at any time.

- 6.3. Payment Processing. Payment from City is past due after sixty (60) days from receipt of an invoice. If City has notice, or with reasonable diligence could have had notice, of any valid reason for disputing any portion of an invoice, City will so notify EN in writing within thirty (30) calendar days of receipt of invoice by City, 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 13.10 of this Agreement within thirty (30) days of the receipt by EN of the notice from City as provided in this section. Any court costs or other reasonable costs incurred by EN in collection of delinquent accounts, excluding any attorney fees, shall be paid by City 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.

7. STANDARD OF CARE

Energy Northwest warrants that all Services shall be performed consistent and in accordance with applicable Prudent Utility Practices relating to operation and maintenance of hydroelectric facilities. 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.

THIS SECTION 8 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.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. The City represents that it has tested the buildings at the Project Site and has no knowledge of any hazardous materials on site including lead paint and asbestos.
- 8.2. The City represents that it is not aware of any union having a claim to any of the work to be performed under this Agreement. In the event that prior to or during the time Energy Northwest performs work under this Agreement any union asserts that the work: (a) must be performed by members of that union, or (b) that EN must recognize the union as the representative of employees that will perform the work, then EN may terminate this Agreement in accordance with Section 12.2.

9. PRE-EXISTING CONDITIONS

To City's actual knowledge, the Project is 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, except for Pre-existing Conditions as described herein this Section 10 and as disclosed in Exhibit D. EN has been

afforded the opportunity to review City's documentation of all Pre-existing Conditions listed in Exhibit D. Notwithstanding any other term or condition of this Agreement, EN shall have no liability of any kind or nature (with the limited exception of gross negligence or willful misconduct, subject to EN's obligations under Section 8 of this Agreement), whether in contract or in tort, at law or in equity, arising out of or relating to any condition of the Project or Project Site 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, a "Pre-existing Condition"). Within ninety (90) days of execution of this Agreement, City and EN shall jointly conduct a pre-existing condition inspection, Project Site survey and review of the Project and Project Site to identify any Pre-existing Conditions, and shall update Exhibit D. If following this inspection, City and EN become aware of any violation of Applicable Law or Applicable Permit, both Parties agree to undertake a mutual investigation and resolution at the sole cost and expense of the City.

10. LIABILITY, INSURANCE AND INDEMNITY

- 10.1. Limitation. Under no circumstances, with the limited exception of negligence or willful misconduct, shall EN or City be liable to the other for any special, indirect, consequential damages, loss of power or profits, or punitive damages. The limitation of liability set forth in this Section 11.1 is for any and all matters for which EN or City may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, or in tort resulting from general negligence, strict liability or otherwise.
- 10.2. PHP Power Scheduling, Dispatch and Water Flow Adjustment. *THIS SECTION WILL NEED A COMPLETE REWRITE to address The Energy Authority's participation.*
- 10.3. Indemnity.
- 10.3.1. Energy Northwest. To the fullest extent allowed under applicable law, and subject only to the limitations provided herein, EN shall defend, indemnify and hold harmless City 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 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.
- 10.3.2. City of Portland. Subject to the limitations and conditions of the Oregon Constitution, Article XI, Section 9 and the Oregon Tort claims Act (ORS 30.260 to 30.300), City shall defend, indemnify and hold harmless EN 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 performed or to be performed under this Agreement by City or City'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.
- 10.4. Insurance. Energy Northwest shall at its own expense maintain during the Term of this Agreement without interruption the coverages of insurance, with limits of no lesser amounts, as set forth in Exhibit B.
- 10.5. Survival. Sections 7 and 8 shall survive the expiration or termination of this Agreement for all purposes.

11. TERM AND TERMINATION

11.1. Term. This Agreement commences on the Effective Date and ends on June 30, 2022 (the “Term”). The “Effective Date” means the last date on which either City or EN executes this Agreement. The Term shall be automatically renewed thereafter for successive terms of one (1) year, unless either Party terminates this Agreement. Either Party may exercise its annual right to terminate by delivering written notice to the other Party at least one (1) year days prior to the end of the Term.

11.2. Termination for Cause. Either Party shall be entitled to terminate this Agreement in the event that the other Party: (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 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 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.

Termination requires written notice to the other Party. The Agreement shall terminate ninety (90) days from the date of receipt of notice or at another mutually acceptable Termination Date. Unless otherwise agreed, EN shall wind down operation of the Project in accordance with Prudent Utility Practices, including but not limited to:

- (a) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services as is not terminated;
- (b) If requested by City in writing, cancel all orders and subcontracts, upon terms acceptable to the City, to the extent that they relate to the performance of Services terminated;
- (c) Take such action as may be necessary or as directed by City to preserve and protect the Project, Project Site, and any other property related to this Project in the possession of EN in which the City has an interest; and
- (d) Submit within fifteen (15) days to the City a written termination settlement proposal and enclosed invoice for costs, fees, and expenses owing to EN; and
- (e) Stop performing Services on the date specified in the written notice of termination; and
- (f) Surrender to the City all tools, supplies, and inventory of the City relating to the Project.

11.3. Termination Payment. City of Portland shall review any termination settlement proposal or proposal for equitable adjustment submitted by Energy within thirty (30) days of receipt. The City of Portland may request additional information or documentation from Energy Northwest in support of any such proposal submitted and Energy Northwest shall have fifteen (15) days to provide a response. The City of Portland shall pay the undisputed amount of any settlement proposal or proposal for equitable adjustment submitted by Energy Northwest within fifteen (15) days after the receipt of any information or documentation it has requested from Energy Northwest, or within forty-five (45) days of the receipt of the proposal, whichever is earlier. Any amounts not paid by the City of Portland shall be subject to Section 13.10 of this Agreement.

12. MISCELLANEOUS

- 12.1. License for EN to access Project Site. Without expense to EN, the City grants EN, its employees, agents, contractors, and subcontractors physical access to the Project Site and all therein on a twenty-four (24) hours a day, seven (7) days a week basis, including rights of way and easements required for unconditional and safe access of such persons and equipment, as necessary to permit EN or its designee to perform the Services. City may impose reasonable restrictions on access to the Project Site so long as such restrictions do not interfere with or delay EN's or its designee's (once EN or its designees have been successfully screened through the Portland Water Bureau's Facility Security Access procedures and appropriate on-site training) performance of obligations hereunder. Any limitation or restriction on access to the Project Site which causes a material increase of the cost, materially impacts the schedule of Services, or otherwise materially affects the performance of EN's obligations under this Agreement shall entitle EN to a WRO to recover said costs.
- 12.2. Project Liens. Except as expressly directed by City in writing, EN shall not assume, create or suffer to exist or be created any lien on the Project or any portion thereof.
- 12.3. Headings. The headings contained in this Agreement are for convenience and reference only, do not form part of this Agreement, and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.
- 12.4. Insecurity and Adequate Assurances. If City's long-term credit rating drops below Investment Grade, EN may demand in writing adequate assurances of City's ability to meet its payment obligations under this Agreement. Unless City provides the assurances in a reasonable time and manner acceptable to EN, in addition to any other rights and remedies available, upon at least seven (7) calendar days' notice to the City of Portland Representative, EN may partially or totally suspend its performance while awaiting assurances, without liability to EN.
- 12.5. 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.
- 12.6. 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.
- 12.7. Independent Contractor. Energy Northwest is an independent contractor to City and, except as set forth in this Agreement including related Work Release Orders, has no authority to act on behalf of, or to represent itself as having such authority on behalf of the City. This Agreement does not establish any partnership or joint venture relationship between the Parties.
- 12.8. Notices. All notices or other communications hereunder shall be in writing or written electronic format and shall be deemed given when delivered to the address (including electronic mail address with confirmation) specified in Exhibit J (as may be revised from time to time) or such other address as may be specified in a written notice in accordance with this Section. Either Party may, by sending a revised and dated Exhibit J to the other Party, revise their addresses and/or persons designated for receipt of notices.
- 12.9. 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.
- 12.10. Disputes; Costs to Prevailing Party. EN and City 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 expert fees and costs but excluding its attorneys' fees.

- 12.11. Representations; Counterparts. Each Party hereto represents 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. This Agreement may be signed in counterparts, each of which will be an original for all purposes, but all of which taken together will constitute one and the same agreement.
- 12.12. Residuals. Subject to Section 13.18, EN and City may use ideas, concepts, know-how, methods, models, data, techniques, skill, knowledge and experience that were used or developed by EN or City in connection with this Agreement.
- 12.13. Non-solicitation of Employees. During and for one (1) year after the Term of this Agreement, City will not affirmatively solicit the employment of, or employ EN's personnel, without ENs prior written consent.
- 12.14. Cooperation. City will cooperate with EN in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. City agrees that EN's performance is dependent on City's timely and effective cooperation with EN. Accordingly, City acknowledges that any material delay by City may result in EN being released from a scheduled deadline or in City having to pay extra fees for EN's agreement to meet a specific obligation or deadline to the extent such delay by City demonstrably causes EN to be delayed and suffer additional costs.
- 12.15. Governing Law and Interpretation. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, 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, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.
- 12.16. 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 City and EN respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the Parties hereto.
- 12.17. Force Majeure. Neither Party shall be responsible for any failure in performance due to Force Majeure. "Force Majeure" means an event which is not within the reasonable control of the Party claiming Force Majeure (the "Claiming Party"), and not due to the fault or negligence of such Party and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include, but is not

restricted to: acts of God; fire; flood; drought; civil disturbance; material shortage; sabotage; action or restraint by court order to public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action).

12.18. Use by Third Parties; Confidentiality. Services performed by EN pursuant to this Agreement is only for the purpose intended and may be misleading if used in another context. Neither EN nor City 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 City and EN. EN may be granted access to information that is exempt from disclosure to the public (Oregon Revised Statutes 192.410 *et seq.*) and may contain “trade secrets” (Oregon Revised Statutes 192.501(2)) 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 be considered to be acting as an agent of the City. 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 Services assigned to EN by City or other Project information to which EN has had access during the Term of this Agreement, without the prior written approval of the City of Portland Representative during the Term of this Agreement and for a period of ten (10) years after the termination of this Agreement. The Parties recognize that EN may receive a request for information or records including information or records considered by City of Portland to amount to a “trade secret” or proprietary information. To the extent EN receives such a request, EN shall immediately notify City of Portland of such request, so that City of Portland’s legal counsel may determine if a disclosure is legally required. City of Portland shall hold EN harmless for any costs and penalties, including 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 records as public records. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of City of Portland claimed proprietary information or trade secrets received by EN from the City, the Parties shall agree to be bound by such order. The Parties recognize that City of Portland may receive a request for information or records including information or records considered by EN to be confidential, proprietary or a “trade secret” subject to the Oregon Public Records Act. To the extent that City of Portland receives such a request, City of Portland shall provide EN with timely written notice of such request, and whether it intends to disclose the information or records. If it is determined by City of Portland’s legal counsel that a disclosure is legally required in response to a request, City of Portland shall promptly notify EN, and EN may choose to approve the release of the information or records, negotiate protection for the information or records, or seek injunctive or other relief, at the sole expense of EN, to prevent disclosure of the information or records proposed to be released. EN shall hold City of Portland harmless for any costs, and statutory awards, imposed by any court or regulatory authority upon City of Portland for refusal to allow the requesting Party to inspect or copy such information or records 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 information or records EN claims to be confidential, proprietary, or “trade secrets” received by City of Portland from EN, the Parties shall agree to be bound by such order.

12.19. 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);

EXHIBIT A

- (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.

EN further agrees to promptly deliver notice to City 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

Signature

Richard Shaff

Name (please print)

Contracts Supervisor

Title

Date

ATTEST:

Office of the Portland City Clerk

Signature

Zizette Mullins

Name (please print)

City Clerk

Title

Date

City of Portland

Signature

Michael Stuhr, P.E. Administrator

Date

Approved as to Form

Office of the Portland City Attorney

Date

Exhibit A-1
Work Release Order (WRO)

This Exhibit A-1 is comprised of four (4) work release orders as itemized and incorporated hereafter:

1. WRO 001 – Project Maintenance and Maintenance Management Services; and
2. WRO 002 – Annual Support Services and Materials; and
3. WRO 003 – Corrective Action/Pre-existing Condition Projects; and
4. WRO 004 – Maintenance Services Implementation and Setup.

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

Exhibit B

Insurance Coverage

Without limiting any liabilities or any other obligations of EN, EN shall, prior to commencing Services, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A- or better such insurance as will protect EN from liability and claims for injuries and damages which may arise out of or result from EN's actions under the Agreement and for which EN may be legally liable, whether such operations are by EN or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. EN shall insure the risks associated with the Services and this Agreement with minimum coverages and limits as set forth below:

Workers' Compensation. EN shall comply with all applicable workers' compensation laws, including ORS 656.126, as it may be amended from time to time. Coverage should also provide applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

Employers' Liability. EN shall maintain employers' liability insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. EN shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$5,000,000 general aggregate and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage
- e. Coverage for explosion, collapse, and underground property damage
- f. Broad form property damage liability
- g. Personal and advertising injury liability, with the contractual exclusion removed

Business Automobile Liability. EN shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to EN's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Services.

Umbrella or Excess Liability. EN shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. EN shall provide notice to City, if at any time the full umbrella limit required under this Agreement is not available, and will purchase additional limits, if requested by City.

Pollution Legal Liability. EN shall maintain pollution legal liability coverage to apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollution into or above land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage and shall be written on an occurrence basis with limits as follows:

- a. Coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- b. Coverage for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically insured or destroyed; and
- c. Coverage for defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

City does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of EN, and EN shall be solely responsible for any deficiencies thereof.

Except for workers' compensation, the policies required herein shall include provisions or endorsements naming City of Portland, its officers, agents and employees as additional insureds. The Commercial General Liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

To the extent of EN's negligent acts or omissions, all policies required by this Agreement shall include: (i) provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder, (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage; and (iii) provisions that such policies are not be canceled or their limits of liability reduced without: (a) ten (10) calendar days prior written notice to City if canceled for nonpayment of premium; or (b) ninety (90) calendar days prior written notice to City if canceled for any other reason. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against the City, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

EN acknowledges that City is self-insured and will not obtain a separate insurance policy for this Agreement. City's self-insurance is subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 and 30.300).

Exhibit C

Place holder

Exhibit D
Pre-existing Conditions

Pre-existing Project and Project Site conditions as referenced in Section 7 of the Agreement also mean and include, but are not limited to, the following:

- a) Any and all unresolved Recommendations from 1986 Morrison-Knudsen Engineers PHP inspections.
- b) Any and all unresolved Recommendations and Actions related to the Project and Project Site from HDR Independent Opinion on Project Operations and Maintenance for Portland Hydroelectric Project Developments 1 & 2 – July 15, 2015.
- c) Any and all unresolved conditions observed and documented in PHP Independent Opinions on PHP Project and Maintenance in addition to those specifically identified herein.
- d) Any and all unresolved conditions observed and documented in PGE PHP Annual Outage Reports.
- e) Any and all incomplete Work Items in the four-page HDR letter to the Portland Water Bureau dated February 22, 2016.
- f) 2014 oil release from Howell-Bunger valve as observed in diversion pool.

Exhibit E
Applicable Project Documents

The “Applicable Project Documents” mean and include only the following:

- a) PHP Powerhouse No.1 Operating Manual (1986)
- b) PHP Powerhouse No.1 Electrical Maintenance Manuals (MPE series 2009 and EMP series 1986)
- c) PHP Powerhouse No.1 Mechanical Maintenance Manuals (MPM series 2009)
- d) PHP Powerhouse No.2 Operating Manual (1986)
- e) PHP Powerhouse No.2 Electrical Maintenance Manuals (MPE series 2009 and EMP series 1986)
- f) PHP Powerhouse No.2 Mechanical Maintenance Manuals (MPM series 2009)
- g) PHP System Description training documents – Hydro Operator Training Program (2010)
- h) PHP 1 and 2 turbine efficiency curves
- i) PHP Powerhouse drawings\schematics
- j) PGE Westside Hydroelectric Maintenance Procedures (2009)
- k) An emergency action plan specifically applicable to Energy Northwest
- l) A hazardous materials plan specifically applicable to Energy Northwest
- m) An oil spill prevention control and countermeasures plan specifically applicable to Energy Northwest

Exhibit F
Applicable Permits

“Applicable Permits” mean and specifically include the following:

Federal Energy Regulatory Commission permit/license (Project No. 2821);
State of Oregon Water Resources Department Permit Nos. 43856 and 43857;
USDA – Forest Service Special Use Permit Licensed Project executed January 1, 1998;
Bull Run Water Supply Habitat Conservation Plan (2008);
National Marine Fisheries Services Incidental Take Permit;

 PHP Pressure Vessel Permits as follows:

1. STX 6990-81 – PHP#2 – Station Air Receiver (Permit No. 37829)
2. STX 6991-81 – PHP#2 – Governor Air Receiver (Permit No. 33071)
3. STX 6992-81X – PHP#2 – Generator Brake Air Receiver
4. STX 6993-81 – PHP#1 – Governor Air Receiver (Permit No. 22146)
5. STX 6994-81X – PHP#1 – Generator Brake Air Receiver
6. STX 6995-81 – PHP#1 – Station Air Receiver (Permit No. 16693)

Exhibit G
Project Site

(To be included upon receipt)

Exhibit H
City's Standard Operating Procedures for the Bull Run Watershed

Exhibit I
Project Supplies and Project Tools

Exhibit J
Party Representative Information

	City	Energy Northwest
Emergency Contact:		
Invoices/Payments:		
Project Manager:		
Contractual Issues/Disputes:		<p>Energy Northwest Attn: Todd Johnson or Richard Shaff, Procurement, M/D 1040 P. O. Box 968 Richland, WA 99352-0968</p> <p>Telephone: (509) 377-8640 Fax: (509) 377-4357</p> <p>Email: tnjohnson@energy-northwest.com</p>

Exhibit K
City's Procurement Policies