



## ENERGY NORTHWEST

### Member Interlocal Cooperative Purchasing Agreement

#### Joint Procurement Program

As provided under RCW Title 39, Chapter 39.34, this Interlocal Cooperative Purchasing Agreement ("Agreement") for participation in a Joint Procurement Program ("JPP") is made by and between Benton PUD, Chelan PUD, Clallam PUD, Clark Public Utilities, Franklin PUD, Grant PUD, Grays Harbor PUD, Klickitat PUD, Mason #1 PUD, Mason #3 PUD, and Skamania PUD (hereinafter individually referred to as a "Participating Member" or collectively as "Participating Members"), Northwest Open Access Network (hereinafter "NoaNet"), 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 PO Box 968, Richland, WA 99352 (hereinafter "Energy Northwest"). All entities participating in this Agreement may also be individually referred to as a "Party" or collectively as "Parties" herein.

WHEREAS, as part of the JPP, Energy Northwest will enter into this Interlocal Cooperative Purchasing Agreement with multiple Participating Members of Energy Northwest and NoaNet;

WHEREAS, upon completion of a formal competitive solicitation and selection process, Energy Northwest will enter into a vendor agreement with one or more vendors to provide materials, equipment, and supplies, often based on potential annual usage or order projections of the Parties;

WHEREAS, Energy Northwest has instituted a Joint Procurement Program and will make its vendor agreements for materials, equipment, and supplies under the JPP available to the Participating Members and, in limited circumstances, to NoaNet;

WHEREAS, Participating Members may make their existing vendor agreements for materials, equipment, and supplies available to other Participating Members and Energy Northwest;

WHEREAS, Energy Northwest, through use of its Business Development Fund, will provide marketing and administrative services, at no cost, to the Participating Members and NoaNet for the one-year term of the JPP;

WHEREAS, the vendor agreements entered into by Participating Members or NoaNet under the JPP will provide that such terms, conditions, and pricing will be available to all Participating Members, NoaNet, and Energy Northwest, subject to applicable laws and regulations; and

WHEREAS, the Parties desire to conserve and leverage resources and to improve the efficiency and economy of the procurement process while reducing solicitation and procurement costs by utilizing the vendor agreements under the JPP;

NOW, THEREFORE, the Parties agree as follows:

#### ARTICLE 1: PURPOSE

This Agreement is entered into pursuant to the authority of RCW 39.34. The purpose of this Agreement is to set forth the mutual obligations, responsibilities and rights of the Parties relating to the acquisition of materials, equipment, and supplies under the JPP.

#### ARTICLE 2: LEGAL AUTHORITY

Each Party represents and warrants that it has the authority to participate in this Agreement.

#### ARTICLE 3: ADMINISTRATION

No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties hereto shall be jointly responsible for administering the performance herein. The Parties will not acquire any jointly-owned real or personal property in connection with performance of this Agreement. The Parties shall each be responsible for their own individual financial costs of performance of this Agreement. No joint budget will be prepared to carry out the performance of this Agreement.

#### ARTICLE 4: APPLICABLE LAWS; INDEMNIFICATION

The procurement of materials, equipment, and supplies, subject to this Agreement, shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules and regulations that govern each Party's procurement policies. It is the sole responsibility of each Party to ensure it has met its applicable solicitation and procurement requirements, including legal and procedural compliance. Further, each Party shall fully evaluate any vendor agreement made available by another Party under this Agreement prior to utilizing the same to ensure that it meets that Party's procurement procedures and legal requirements. No Party shall be liable to another Party for any error or omission in obtaining a vendor agreement. In the event a Party fails to comply with its legal and procedural procurement requirements, that Party shall be solely liable for any resulting consequences and shall indemnify and hold the other Parties harmless from any claims arising from such action.

#### ARTICLE 5: USE OF BID, PROPOSAL, OR VENDOR AGREEMENTS

- a. Each Party shall be responsible for their own procurement of materials, equipment and supplies. No other Party shall be liable for any breach or other violation, either alleged or actual, by a procuring Party under a vendor agreement. The procuring Party shall indemnify and hold the other Parties harmless from any claim that may arise from the action or inaction of the procuring Party. Further, the procuring Party acknowledges and agrees that the other Parties to the JPP have a beneficial interest in this Agreement for the protections set forth herein.
- b. The procuring Party shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar materials, equipment, and supplies outside the scope of a vendor agreement.
- c. Each procuring Party may exercise any rights or remedies it may have against a vendor that are specific to its vendor agreement or as provided by law.
- d. The cooperative use of bids, proposals, or vendor agreements obtained by a Party to this Agreement shall be in accordance with the terms and conditions of the bid, proposal or vendor agreement, except as modified where allowed or required by applicable law, and does not relieve the Party of its other bid requirements under state law or local policies.
- e. The participation of NoaNet in this JPP is limited to the procurement of fiber optic cable for use by and for the benefit of Energy Northwest member utilities.

#### ARTICLE 6: PAYMENT OBLIGATIONS

The procuring Party will make timely payments to vendors for materials, equipment, and supplies it receives in accordance with the terms and conditions of the vendor agreement. Payment for materials, equipment, and supplies, inspections and acceptance of materials, equipment and supplies procured by the procuring Party shall be the exclusive obligation of such procuring Party. The procuring Party shall be solely responsible for resolving any and all disputes between it and the vendor and disputes shall be resolved in accordance with the terms of the vendor agreement and/or purchase order.

#### ARTICLE 7: COMMENCEMENT DATE

This Agreement shall commence upon the Effective Date, which shall be the date that Energy Northwest signs this Agreement after all the Participating Members and NoaNet have executed the Agreement and have returned copies of their signature pages to Energy Northwest.

#### ARTICLE 8: TERMINATION OF AGREEMENT

This Agreement shall remain in effect for a term of one year from the Effective Date, unless earlier terminated by a Party giving thirty (30) days' advanced, written notice to all of the other Parties.

#### ARTICLE 9: ENTIRE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete Agreement between the Parties hereto, and supersede any and all oral and written agreements between the Parties relating to matters herein.

#### ARTICLE 10: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by all Parties, except that any alterations, additions or deletions of this Agreement which are required by changes in federal and state law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

ARTICLE 11: SEVERABILITY

All Parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 12: INDEPENDENT CAPACITY

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of any other Party to the Agreement.

ARTICLE 13: WAIVER

The failure of any Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the Party.

ARTICLE 14: ASSIGNMENT

No Party hereto shall assign its rights or obligations under this Agreement without the prior written consent of the other Parties hereto.

ARTICLE 15: COUNTERPARTS

This Agreement may be executed simultaneously in several counterparts and by multiple Parties, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures transmitted electronically, whether by computer or facsimile, shall be considered original signatures.

ARTICLE 16: FILING

Executed copies of this Agreement shall be filed as required by RCW 39.34.040 or alternatively listed on the Parties' respective websites or other electronically retrievable public source.

ARTICLE 17: RATIFICATION

Acts taken pursuant to this Agreement but prior to its Effective Date are hereby ratified and confirmed.

ARTICLE 18: GOVERNING LAW

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws.

THIS AGREEMENT is dated this 20<sup>th</sup> day of September 2018 ("Effective Date").

ENERGY NORTHWEST

BY: 

ITS: Contracting Office

Energy Northwest Contact Information:

Contact Person: Sherri Schwartz,

Address: 3000 George Washington Way  
P.O. Box 968, Mail Drop 1040  
Richland, WA 99352

Telephone No.: 509-372-5072

Email: [slschwartz@energy-northwest.com](mailto:slschwartz@energy-northwest.com)

PARTICIPATING MEMBER  
ENDORSEMENT AND AUTHORIZATION

The undersigned acknowledges, on behalf of Mason County PUD No. 3  
(Participating Member) that he/she has read and agrees to the general terms and conditions set forth in this Interlocal Cooperative Purchasing Agreement.

The undersigned further acknowledges that the purchase of materials, equipment, and supplies under the Joint Procurement Program is at the sole discretion of the Participating Member and, as stated in this Agreement, other Parties will not be held liable for any costs or damages incurred by or as a result of the actions of the vendor or any other Party. Upon award of a vendor agreement, each participating Party is responsible for dealing directly with the vendor concerning its purchase of materials, equipment, and supplies, disputes, invoicing and payment.

The undersigned affirms that he/she is an agent of Mason County PUD No. 3, and is duly authorized to execute this Interlocal Cooperative Purchasing Agreement.

Annette Creekpaum  
BY: Annette Creekpaum  
ITS: Manager

Date: 9-11-2018

Participating Member Contact Information:

Contact Person: Nancy Bolender  
Address: Mason County PUD No. 3  
PO Box 2148  
Shelton, WA 98584  
Telephone No.: 360-426-8255 ext. 5206  
Email: nancyb@masonpud3.org