

Attachment 2

NORTH MOUNTAIN SUBSTATION
TELECOMMUNICATIONS AGREEMENT BETWEEN
THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT
AND PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY, WASHINGTON

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NORTH MOUNTAIN SUBSTATION
TELECOMMUNICATIONS AGREEMENT BETWEEN
THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT
AND PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY, WASHINGTON

This AMENDED AND RESTATED NORTH MOUNTAIN SUBSTATION TELECOMMUNICATIONS AGREEMENT is entered into by THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT (Seattle), and PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON (DISTRICT), municipal corporations of the State of Washington, hereinafter individually referred to as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Seattle has agreed to own, operate and maintain North Mountain Substation for the purpose of providing power transfer services to the District's Darrington area customers; and

WHEREAS, Seattle and the District have a North Mountain Substation Operation and Maintenance Agreement and a Power Transfer Agreement or successor agreement, and together with this Agreement are "the Agreements" necessary for Seattle to transfer power to the District's Darrington area customers, and

WHEREAS, Seattle has indicated willingness to use portions of its existing communication system for the control of North Mountain Substation to the extent such does not interfere with or preclude use of the Seattle communication system for its own purposes and provided that the District agrees to pay for the use of Seattle's system; and

WHEREAS, the District agrees to fund all additional components of the communication system during the term of this Agreement that are reasonably necessary for Seattle's communication and control of North Mountain Substation, as specified by the City, to be compatible with Seattle's communication design standards; and

WHEREAS, the District agrees to be responsible for the cost of its communication ties with Seattle's equipment at Snohomish Substation for transmitting North Mountain Substation data to the District communications center; and

WHEREAS, the District agrees to be responsible for the communication and control costs Seattle incurs in order to transfer Bonneville Power Administration (BPA) power for delivery to the District's Darrington area customers, as required by the City's Power Transfer Agreement or successor agreement with the District; and

WHEREAS, the District is reimbursing Seattle for all other costs the City will incur for the operation and maintenance of the North Mountain 230kV system and control of North Mountain substation under the terms of the Operation and Maintenance Agreement between the Parties, and

WHEREAS, the Parties own, operate and maintain their own data communications equipment, and

WHEREAS, in order to provide for the communication system described above,

NOW, THEREFORE, the Parties agree as follows:

1. Terms of Agreement

- a. This Agreement shall take effect at 0000 hours on August 1st, 2022, and shall expire at 2400 hours on July 31st, 2042, unless terminated by agreement of the Parties.
- b. This Agreement may be extended, amended, or terminated upon mutual agreement of the Parties.
- c. In the event the Agreement is terminated, all liabilities incurred hereunder are hereby preserved until satisfied.
- d. On its effective date, this Agreement terminates and replaces in its entirety, the prior 1991 Agreement. All Obligations incurred under the prior agreement shall be preserved until fully satisfied.

2. Telecommunication Operations & Maintenance

- a. The District Shall
 - i. Perform placement and modification of the District's future communication equipment in a timely and workmanlike manner and subject to the approval, general guidance, and direction of Seattle's representative or designee. The District's communication equipment shall not be placed so as to electrically or physically interfere with the City's use of the site, building, towers or road.
 - ii. The installation, operation, maintenance and removal of the District's communication equipment shall be without cost and under the general

supervision of Seattle, and subject also to such rules and regulations as it may from time to time prescribe. The District assumes all risk of loss or damage, to their own communication system, or injury resulting from the malfunction of the District's communication facilities.

- iii. In the event that interference should result from the District's installations or connections to Seattle's facility, the District shall be responsible for immediately ceasing such operation, and eliminating the interference to the satisfaction of Seattle before resuming operations.
- iv. In case interference results from the District's operations or owned communication equipment at North Mountain Substation, Seattle may order corrective measures to be taken immediately and interference eliminated within five days from receipt of notice. In the event operation of equipment or other actions by the District render Seattle's equipment unusable the District, upon notification by Seattle, shall immediately cease such operations or actions. The District will be responsible and will assume the cost of the corrective measures needed to eliminate the interference or modify the District's owned facilities to the satisfaction of Seattle.
- v. Elimination of interference shall be accomplished first by modification of the District's equipment, and then, if not corrected, by modification to Seattle's equipment at the expense of the District. In the event that Seattle determines an existing incompatibility between Seattle and the District's communication at North Mountain, the District will cease operations immediately.

b. Seattle Shall

- i. Operate and maintain all Seattle owned communication and control equipment at North Mountain substation, for the purpose of serving the District's Darrington area load.
 - 1. This specifically includes the communication equipment and support systems used to communicate operational data to BPA regarding North Mountain Substation.

- c. Neither Party shall perform any operation or maintenance procedures on the equipment owned by the other Party, except those pursuant to the emergency operating procedures outlined in the North Mountain Operation and Maintenance Agreement.

3. Transfer of Rights

- a. The District's use of the City's Telecommunication and control system at North Mountain Substation and lease of other City facilities is limited to the purpose of the operation and maintenance and control of North Mountain Substation, and is not transferrable or to be used for any other purpose.

4. Expenses and Payment

- a. The District shall pay all of the costs of operating and maintaining the District owned communication system that is used for communication and control of North Mountain Substation.
- b. The District shall pay all of the costs of operating and maintaining the Seattle owned communication system that is used for communication and control of North Mountain Substation.
- c. The District shall pay all of the costs of operating and maintaining the BPA owned communication equipment, if any charges are levied on the District, or Seattle by BPA for the operation and maintenance of communications at North Mountain Substation.
- d. The District shall pay to Seattle a monthly lease charge for space to locate District owned communications equipment installed in the Seattle control room at North Mountain Substation.
- e. These expenses are outlined in Exhibit A, North Mountain Telecommunication Expenses.
- f. Seattle's representative shall periodically and not to exceed once per year, update Exhibit A to reflect Seattle's cost of providing communication for North Mountain substation. This periodic update shall occur during the first quarter of each year.

- i. Seattle shall advise the District sixty, 60 days prior to an updated Exhibit A being used to charge the District.
 - ii. The District may request a meeting to discuss changes to Exhibit A withing thirty (30) days of receiving an updated Exhibit A.
- g. Billing and payment will occur monthly in accordance with the following:
 - i. The accounting period for billing under this Agreement shall be the first day of the calendar month to the last day of the calendar month unless otherwise agreed in writing between the Parties' Representative.
 - ii. The District shall pay Seattle the amount due under any invoice no later than thirty days after the date of the invoice. Seattle shall transmit via email or other acceptable means the invoice no later than 5 days after the date on the invoice.
 - iii. In the event any invoice, or part thereof, is disputed, payment of the invoice as rendered shall be made when due, with subsequent invoice being adjusted for any amount found to be in error.
 - iv. Seattle may combine invoices for this Agreement with other bilateral District-City Agreements into one monthly billing, but the itemized cost of each Agreement will be identified separately.

5. Release

- a. Each Party releases the other from liability for loss or damage to it which shall include, but not be limited to, consequential damages and the loss of use or profit, which arises out of or in connection with the negligence of a Party, or negligence any officer, agent, or employee of a Party, under this Agreement.

6. Indemnification Regarding North Substation

- a. To the maximum extent allowed by law, including R.C.W. 25.32A.090, each Party shall defend, indemnify and hold harmless the other Party, its successors and assigns, and the respective directors, officers, employees and agents of the other Party and its successors and assigns (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including but not limited to, reasonable attorneys' fees) caused by the negligence of the other Party or anyone acting on the other Party's behalf

- b. A Party shall not be liable to the other Party's customers for any interruption to the service or property damage caused by the provision of service, and each Party hereby indemnifies, protects and saves harmless the other Party against any and all such claims or demands, suit or judgment for loss, liability, damages and expenses.
- c. Indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents, and employees of either party hereto including payment made under or in connection with the Workers' Compensation Law or under any plan for employees' disability and death benefits.
- d. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, the District and Seattle waive their immunity under RCW Title 51 as provided in RCW 4.24.115; provided, however, the foregoing waiver shall not in any way preclude either Party from raising such immunity as a defense against any claim brought against a Party by any of its employees. This waiver has been mutually negotiated by the Parties.

7. Dispute Resolution

- a. The Parties recognize that cooperation and communication are essential to resolving issues quickly and efficiently. If any dispute arises in regard to the terms or conditions of this Agreement, then the parties shall meet and engage in good faith discussions with the objective of settling the dispute within thirty (30) days after either party requests such a meeting.
- b. If the dispute remains unresolved at the end of thirty (30) days, the matter shall be referred to designated senior managers from each Party, who shall meet and engage in good faith discussions with the objective of settling the dispute.
- c. If the parties cannot resolve the dispute within ninety (90) days from commencing dispute resolution, the parties shall refer the dispute to mediation using a mediator mutually agreeable to the parties. If these representatives cannot resolve the dispute within fourteen (14) calendar days after referral of the dispute to mediation, either party may seek resolution of the dispute through litigation or other judicial proceedings in Superior Court of King County.

8. Assignment

- a. This Agreement shall not be assigned by either Party without the prior written approval of the other.

9. Review and Termination

- a. The District may terminate this Agreement at any time upon twelve (12) months prior written notice to Seattle, and provided that similar notices of termination are provided by it with respect to the Power Transfer and Telecommunications Agreements.
- b. The District may terminate this Agreement upon prompt written notice to Seattle in the event of catastrophic loss or damage to the Substation which precludes transfer of power to the District.
- c. Seattle may terminate this Agreement at any time upon (120) days prior written notice to the District in the event of nonpayment of charges. If payment of such charges is made by the District within the 120-day notice period, this agreement shall not be terminated.
- d. Seattle may terminate this Agreement at any time upon twelve (12) months prior written notice to the District, for the District's failure to comply with any material provision of this Agreement, unless the District rectifies the violation to the satisfaction of Seattle.
- e. The Parties agree that on or before February 1, 2040, they will begin to discuss appropriate terms and conditions which could be incorporated into a new or extended Agreement in view of all applicable factors including existing and prospective Darrington area load and use of Seattle's Gorge to Snohomish transmission system.
- f. Six months prior to the expiration of this Agreement, and following the procedures agreed to by the Parties, Seattle will offer to extend this Agreement provided hereunder for a term and on conditions then deemed to be just and reasonable by both Parties
- g. The provisions of this Article shall not limit any remedy at law or equity otherwise available to either Party.

10. Representatives of the Parties and Notices

- a. Representatives of the Parties and Notices shall be same as those maintained as part of the North Mountain Operations and Maintenance Agreement between Seattle and the District.

11. No Waiver

- a. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

12. Status of Parties

- a. Each Party to this Agreement will perform services as an independent contractor with respect to the other. Any work or service performed by either Party is deemed performed for that Party, and no person employed by one Party shall be deemed an employee of the other.
- b. Work will be performed by each Party in accordance with its own methods.
- c. Each Party will perform work in accordance with this Agreement, applicable laws, and regulations.

13. Whole Agreement

- a. The terms, covenants and conditions of this Agreement, together with any exhibits or other such documents incorporated therein, or written amendments constitute the entire agreement between the Parties, and no understandings or obligations not therein expressly set forth will be binding upon them.

14. Amendment

- a. This Agreement may be amended at any time upon mutual written or digital agreement of the Parties.

15. Severability

a. If any part of this Agreement shall prove to be unenforceable, such unenforceability shall not extend beyond the part affected. The unaffected part of the Agreement will continue in full force and effect and will be binding upon the Parties hereto.

16. Legal Relations

- a. The Parties will perform and comply with all applicable laws or other governmental regulations.
- b. The Agreement will be construed and interpreted in accordance with the laws of the State of Washington and the Venue of any action brought hereunder will be the Superior Court of King County.

17. Signatures

ACCEPTING FOR THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT

Debra Smith

General Manager/CEO Date: _____

ACCEPTING FOR THE PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON

John Haarlow

Chief Executive Officer, General Manager

Date: _____

Exhibit A

North Mountain Telecommunications Expenses

Expenses

1. The costs of operating and maintaining the Seattle owned communication equipment and system that is used for communication and control of North Mountain Substation is addressed in the North Mountain Operations and Maintenance Agreement between Seattle and the District.
2. The costs of data bandwidth associated with and used for communication and control of North Mountain Substation is addressed through Transmission charges.
3. There are currently no costs of operating and maintaining BPA owned communication equipment at North Mountain substation charged directly to Seattle or the District.
4. Lease charges for District owned communications equipment installed in the Seattle control room at North Mountain Substation shall be for adequate space for the following equipment:
 - a. One (1) 2ftx2ftx6ft RTU cabinet and associated conduit
 - b. Two (2) rack mounted equipment spaces and associated conduit
 - c. The lease space is approximately 50sqft.
5. The annual lease charge shall be $50\text{sqft} \times \$50.40\text{yr/sqft} = \$2,520$. The monthly charge amount will be \$210.00