

Ordinance No. 123302

Council Bill No. 116855

AN ORDINANCE relating to the City Light Department; authorizing execution of a general services agreement with the Northwest Power Pool Corporation, that clarifies the role of the Northwest Power Pool Corporation with respect to the Northwest Power Pool.

CF No. _____

Date Introduced:	<u>May 3, 2010</u>	
Date 1st Referred:		To: (committee) <u>Energy, Technology, + Civil Rights</u>
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	<u>5.10.10</u>	Full Council Vote: <u>7-0</u>
Date Presented to Mayor:	<u>5.11.10</u>	Date Approved: <u>May 13, 2010</u>
Date Returned to City Clerk:	<u>May 14, 2010</u>	Date Published: _____ T.O. <input checked="" type="checkbox"/> F.T. _____
Date Vetoed by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Bruce A. Hewell

Councilmember

Committee Action:

5.6.10 Pass 2-0 BH, RC

5.10.10 Passed 7-0 Excused; TB, TR

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

LAW DEPARTMENT

LAW DEPARTMENT

Law Dept. Review

OMP Review

City Clerk Review

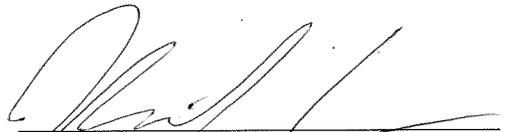
Electronic Copy Loaded

Indexed

1 to enter into amendments of the General Services Agreement, including extensions thereof, that the
2 Superintendent deems to be in the best interests of the utility and its ratepayers, and which are consistent
3 with this ordinance and Ordinance 117604.

4 Section 2. This ordinance shall take effect and be in force 30 days from and after its approval by
5 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take
6 effect as provided by Municipal Code Section 1.04.020.

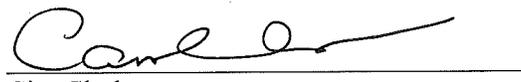
7 Passed by the City Council the 10th day of May, 2010, and signed by
8 me in open session in authentication of its passage this
9 10th day of May, 2010.

10
11 
12 President _____ of the City Council

13 Approved by me this 13th day of May, 2010.

14
15 
16 Michael McGinn, Mayor

17 Filed by me this 14th day of May, 2010.

18
19 
20 City Clerk

21 (Seal)

22
23 Attachments: Exhibit 1: General Services Agreement
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25
26
27



NORTHWEST POWER POOL GENERAL SERVICES AGREEMENT

This Northwest Power Pool General Services Agreement (this "Agreement") is between the Northwest Power Pool, an Oregon nonprofit corporation (the "NWPP Corporation"), and the counter-party identified on the signature page of this Agreement (the "Participating Organization") and is effective as of _____, _____ (the "Effective Date").

RECITALS

- A. The Participating Organization is a signatory to the Northwest Power Pool Agreement dated as of December 22, 1995 and amended November 13, 1996, as it may be supplemented, further amended, or superseded from time to time (the "Northwest Power Pool Agreement").
- B. For each upcoming fiscal year, the committees and groups organized and operating pursuant to the Northwest Power Pool Agreement (the "Pool Committees and Groups") review a forecast of estimated annual expenditures (the "Annual Budget Forecast") for the NWPP Corporation to provide services to facilitate the implementation of the Northwest Power Pool Agreement, as more fully described in Section 2.1 of this Agreement. Those NWPP Corporation services for which funding is provided in an Annual Budget Forecast approved by the Pool Committees and Groups are referred to in this Agreement as "Support Services."
- C. The Participating Organization is obligated to pay its allocated share of fiscal year expenses, consistent with the Annual Budget Forecast, incurred pursuant to the Northwest Power Pool Agreement.
- D. The NWPP Corporation is not a party to the Northwest Power Pool Agreement. Accordingly, although the NWPP Corporation incurs expenses to perform the Support Services and invoices the signatories to the Northwest Power Pool Agreement for their allocated shares of these expenses consistent with the provisions of the Northwest Power Pool Agreement, the NWPP Corporation has no rights under the Northwest Power Pool Agreement to enforce payment obligations. Likewise, the Participating Organization has no rights under the Northwest Power Pool Agreement to receive services from the NWPP Corporation.
- E. The Participating Organization and the NWPP Corporation wish to enter into this Agreement to set forth their respective obligations related to the Support Services.
- F. The NWPP Corporation and the Participating Organization also wish to establish terms under which the NWPP Corporation and the Participating Organization may enter into work orders for the NWPP Corporation to provide additional services, either to the Participating Organization or to Pool Committees and Groups to which the Participating Organization belongs.

Therefore, in consideration of the foregoing and the mutual promises set forth in this Agreement, the Participating Organization and the NWPP Corporation agree as follows:



AGREEMENT

1. Term, Termination, and Survival.

- 1.1 Term.** This term of this Agreement will be from the Effective Date until it is terminated in accordance with Section 1.2 or Section 1.3 below.
- 1.2 Termination by Agreement.** This Agreement may be terminated at any time by written agreement of both parties.
- 1.3 Automatic Termination When the Participating Organization's Obligations Under the Northwest Power Pool Agreement Terminate.** Except for obligations arising out of an Individual Work Order executed pursuant to Section 3.1 or an Extraordinary Services Work Order executed pursuant to Section 3.2, this Agreement will terminate automatically on the date all of the Participating Organization's obligations under the Northwest Power Pool Agreement terminate. For the avoidance of doubt, to the extent the Northwest Power Pool Agreement provides for the Participating Organization's payment obligations to continue after the date on which all of its other rights and obligations under the Northwest Power Pool Agreement terminate, the Participating Organization's obligations under this Agreement will continue for so long as the Participating Organization's payment obligations under the Northwest Power Pool Agreement remain in effect.
- 1.4 Notice of Withdrawal from Northwest Power Pool Agreement.** If at any time during the term of this Agreement the Participating Organization gives notice of termination under the Northwest Power Pool Agreement, the Participating Organization will deliver to the NWPP Corporation, concurrently or within no more than five business days, a copy of its termination notice.
- 1.5 Return of Contribution to Operating Cash Reserves.** The NWPP Corporation will return to the Participating Organization, within 30 days following the date on which this Agreement terminates, an amount equal to the Participating Organization's contribution to the operating cash reserves of the NWPP Corporation, net of any amounts owed by the Participating Organization to the NWPP Corporation.
- 1.6 Survival.** All obligations and liabilities incurred in connection with this Agreement will survive until fully satisfied or discharged, and all limitations of liability provided in this Agreement will survive until all statutes of limitation related to claims that could be made in connection with this Agreement have run. Without limiting the generality of the foregoing, the parties specifically intend that the provisions of Sections 1.5, 1.6, 5, 6, and 7, as well as all obligations that remain to be performed under any Individual Work Order executed pursuant to Section 3.1 or any Extraordinary Services Work Order executed pursuant to Section 3.2, will survive termination of this Agreement.



2. Annual Budget Forecast and Support Services.

- 2.1 Development and Approval of Annual Budget Forecast.** Not less than 60 days before the start of each fiscal year (beginning with the fiscal year that starts on July 1, 2010 and ends on June 30, 2011), the NWPP Corporation will prepare and present to those Pool Committees and Groups whose approval is required under the Northwest Power Pool Agreement an Annual Budget Forecast. An Annual Budget Forecast will be deemed approved for purposes of this Agreement if (but only if) it is approved in accordance with the voting procedures specified in the Northwest Power Pool Agreement for Pool Committee and Group approval of Annual Budget Forecasts.
- 2.2 Provision of Support Services.** During the term of this Agreement and subject to Section 2.3, the NWPP Corporation will provide those Support Services to be performed by "NWPP staff" under the Northwest Power Pool Agreement and will make good faith, commercially reasonable efforts to carry out requests and instructions of the Pool Committees and Groups issued in accordance with the Northwest Power Pool Agreement.
- 2.3 Option to Require Separate Work Order for Major Line Items.** The NWPP Corporation may, at its option, elect not to incur (or obligate itself to incur) costs related to any Major Line Item (as defined below) until there is in place a mutually acceptable work order (a) defining the parties' obligations related to the Support Services covered by the Major Line Item, and (b) executed by the NWPP Corporation and each member of the Pool Committee or Group to which the Support Services covered by the Major Line Item will be provided.
- 2.4 Definition of Major Line Item.** For purposes of this Agreement, the term "Major Line Item" means an individual line item entry in an Annual Budget Forecast that equals or exceeds 10% of the total Annual Budget Forecast for that fiscal year.

3. Additional Services.

- 3.1 Requests for Individual Services.** The Participating Organization may, at any time during the term of this Agreement, request that the NWPP Corporation provide to it, on an individual basis (or jointly with other signatories to the Northwest Power Pool Agreement), services that are not included in the Annual Budget Forecast and are in addition to the Support Services. Subject to Section 3.4, the NWPP Corporation will, within a reasonable time following receipt of a request under this Section 3.1, prepare and offer for the Participating Organization's execution a proposed document (an "Individual Work Order") containing the terms and conditions (including scope of work, schedule, and required compensation) under which the NWPP Corporation is willing to offer the requested services, provided the NWPP Corporation believes in good faith that it has adequate staffing, resources, and expertise to provide the requested services without adversely affecting its ability to provide the Support Services according to the standard specified in Section 5. If the NWPP Corporation and the Participating Organization

thereafter execute a mutually acceptable Individual Work Order, the services to be performed under the Individual Work Order will be governed by this Agreement, provided, however, that even if this Agreement terminates, all obligations of the NWPP Corporation and the Participating Organization undertaken pursuant to the Individual Work Order will survive until the Individual Work Order is terminated in accordance with its terms or all obligations of the parties to the Individual Work Order have been satisfied.

3.2 Pool Committee and Group Requests for Extraordinary Support Services. If, at any time during the term of this Agreement, a Pool Committee or Group determines (in accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement) that it wishes the NWPP Corporation to provide services that are not included in the Annual Budget Forecast and constitute Extraordinary Support Services (as defined below), then upon request by the Pool Committee or Group and subject to Section 3.4, the NWPP Corporation will, within a reasonable time following receipt of the request, prepare and offer for execution by the members of the Pool Committee or Group a proposed document (an "Extraordinary Service Work Order") containing the terms and conditions (including scope of work, schedule, and required compensation) under which the NWPP Corporation is willing to offer the Extraordinary Support Services, provided the NWPP Corporation believes in good faith that it has or will have adequate staffing, resources, and expertise to provide the Extraordinary Support Services without adversely affecting its ability to provide the Support Services according to the standard specified in Section 5. If the NWPP Corporation and each member of the applicable Pool Committee or Group thereafter execute a mutually acceptable Extraordinary Service Work Order, the Extraordinary Support Services to be performed under the Extraordinary Service Work Order will be governed by this Agreement, provided, however, that even if this Agreement terminates, all obligations of the NWPP Corporation and members of the applicable Pool Committee or Group undertaken pursuant to the Extraordinary Service Work Order will survive until the Extraordinary Service Work Order is terminated in accordance with its terms or all obligations of the parties to the Extraordinary Service Work Order have been satisfied.

3.3 Definition of Extraordinary Support Services and Additional Services

- (a) **Definition of Extraordinary Support Services.** For purposes of this Agreement, the term "Extraordinary Support Services" means services provided in accordance with Section 3.2 on behalf of a particular Pool Committee or Group that would require an increase in NWPP Corporation aggregate expenditures (measured by total fixed and variable costs of operation, including all employee compensation and benefits) of 5% or more during the term of a Extraordinary Service Work Order (as compared to aggregate expenditures during the same period excluding all costs incurred in connection with the Extraordinary Service Work Order).
- (b) **Definition of Additional Services.** For purposes of this Agreement, the term "Additional Services" means (i) services provided to the Participating



Organization pursuant to Section 3.1 or (ii) Extraordinary Support Services provided to a Pool Committee or Group to which the Participating Organization belongs, or (iii) both of the foregoing together.

3.4 Obligation to Offer Comparable Terms. The NWPP Corporation will not offer to any other signatory to the Northwest Power Pool Agreement an agreement to provide Support Services that contains terms more favorable than those provided in this Agreement without contemporaneously offering to amend this Agreement to include comparably favorable terms. In offering and executing either (a) an Individual Work Order pursuant to Section 3.1, or (b) an Extraordinary Service Work Order pursuant to Section 3.2, the NWPP Corporation will offer to the Participating Organization or the members of the Pool Committee or Group, as applicable, terms and conditions (including required compensation) that are (i) based on the NWPP Corporation's good faith estimate of anticipated costs (measured by total fixed and variable costs of operation, including, without limitation, all employee compensation and benefits) to provide the Additional Services, and (ii) no less favorable than those the NWPP Corporation offers to other parties for substantially similar services.

4. Documentation for Compliance Purposes.

4.1 Documentation Concerning Services Provided Under Section 3.1. If at any time during the term of this Agreement the Participating Organization requests that the NWPP Corporation provide documentation concerning any services provided to the Participating Organization pursuant to Section 3.1 (beyond the terms of the applicable Individual Work Order), the NWPP Corporation will, within a reasonable time following receipt of the request, prepare draft documentation for review by the Participating Organization and will thereafter make good faith, commercially reasonable efforts to develop final documentation acceptable to the Participating Organization. If requested by the Participating Organization, the NWPP Corporation will execute and include as an appendix to the related Individual Work Order any documentation requested and approved by the Participating Organization under this Section 4.1. The NWPP Corporation will treat any costs it incurs to provide documentation requested under this Section 4.1 as costs to be recovered under the applicable Individual Work Order.

4.2 Documentation Concerning Support Services or Extraordinary Support Services. If at any time during the term of this Agreement a Pool Committee or Group determines (in accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement) that it is necessary or beneficial, for regulatory compliance or other business purposes, that there be formal documentation concerning any Support Services or Extraordinary Support Services provided by the NWPP Corporation under this Agreement, then upon request by the Pool Committee or Group, the NWPP Corporation will, within a reasonable time following receipt of the request, prepare draft documentation for review by the Pool Committee or Group and will thereafter make good faith, commercially reasonable efforts to develop final documentation acceptable to the applicable Pool Committee or Group (as determined in



accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement). If requested by a Pool Committee or Group, the NWPP Corporation will offer to execute and, at the Participating Organization's option, include as an appendix to this Agreement, any documentation requested and approved by that Pool Committee or Group under this Section 4.2. The NWPP Corporation will treat any costs it incurs to provide documentation requested under this Section 4.2 either (a) as costs to be recovered for Support Services if the documentation relates to Support Services, or (b) as costs to be recovered under an Extraordinary Service Work Order if the documentation relates to Extraordinary Support Services.

5. **Standard of Service.** The NWPP Corporation will provide the Support Services and any Additional Services, and will prepare, deliver, and maintain documentation requested under Section 4 of this Agreement (all of the foregoing collectively, the "Services"), in an efficient and expeditious manner, using the skills and abilities necessary to provide the Services in conformance with applicable law and professional standards generally expected of businesses providing services of a similar type. ***EXCEPT AS PROVIDED IN THIS SECTION, THE NWPP CORPORATION MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO THE SERVICES AND THE NWPP CORPORATION DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*** This Section 5 governs, modifies, and supersedes any other terms in this Agreement or other matters, including course of conduct, that may be construed to address warranties or guarantees or the quality of the Services.

6. **Compensation and Billing.**

6.1 **Compensation and Billing for Support Services.** During the term of this Agreement, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of Support Services, so long as the invoices are consistent with applicable terms of the Northwest Power Pool Agreement.

6.2 **Compensation and Billing Related to Individual Work Orders.** During the term of any Individual Work Order executed by the NWPP Corporation and the Participating Organization pursuant to Section 3.1, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of services under the Individual Work Order.

6.3 **Compensation and Billing Related to Extraordinary Services Work Orders.** During the term of any Extraordinary Services Work Order executed by the NWPP Corporation and any Pool Committee or Group to which the Participating Organization belongs, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of services under the Extraordinary Services Work Order.



6.4 Invoices. The Participating Organization may, by written notice to the NWPP Corporation, inform the NWPP Corporation as to whether it wishes Services provided to it (or any Pool Committee or Group to which it belongs) under this Agreement to be billed to it by separate invoice for each category of Service or in a single combined invoice. If the Participating Organization does not notify the NWPP Corporation of its preference with respect to separate or combined invoices, the NWPP Corporation may choose the manner in which it invoices the Participating Organization, but if it uses a combined invoice, the NWPP Corporation will identify separately on the invoice the amounts due for Support Services, services provided pursuant to Section 3.1, and Extraordinary Support Services.

7. Limitation of Liability.

7.1 Release of the NWPP Corporation from Liability and Covenant Not to Sue.

Except as specifically provided otherwise in Section 7.2, the Participating Organization irrevocably releases the NWPP Corporation from, and covenants not to sue the NWPP Corporation with respect to, any damages, losses, liability, claims, demands, remedies, and causes of action of any kind whatsoever (collectively, "Claims") arising from any action or failure to act by the NWPP Corporation in connection with this Agreement or the Services. The foregoing release and covenant not to sue includes all Claims based on corporate law, tort, tortious course of conduct, contract, obligations of "good faith," public policy, common law, equity, or any other legal theory and applies to all actual, direct, special, punitive, exemplary, consequential, incidental, and indirect losses and damages, including those based on lost or prospective profits, inaccurate, damaged, lost, or incomplete data, expenses, fines, penalties, interest, assessments, judgments, attorneys' and investigative fees and costs, and all other equitable, compensatory, or punitive relief.

7.2 Right to Specific Performance; Exception for Willful Action.

The NWPP Corporation acknowledges that in the event of a breach of this Agreement by the NWPP Corporation, the Participating Organization's release of the NWPP Corporation from liability and covenant not to sue for damages eliminates the primary recourse for the Participating Organization. Accordingly, the NWPP Corporation acknowledges and agrees that the Participating Organization will be entitled to injunctive relief to prevent a breach by the NWPP Corporation and to compel specific performance of the NWPP Corporation's obligations under this Agreement, without the posting of any bond and without proof of any actual damages. The NWPP Corporation will not oppose the granting of injunctive relief in accordance with this Section 7.2. The release and covenant not to sue in Section 7.1 does not apply to (a) any action against the NWPP Corporation seeking specific performance of this Agreement, or (b) Claims based on the NWPP Corporation's Willful Action. As used in the foregoing sentence, the term "Willful Action" means an action taken or not taken by the NWPP Corporation that is (i) knowingly or intentionally taken or not taken with intent to cause resulting injury or damage or (ii) wantonly reckless. Willful Action does not include any act or failure to act that is involuntary, accidental, negligent, or grossly negligent.



8. **Adequacy of NWPP Corporation Resources; No Conflicting Obligations; Liability Protections in Agreements with Outside Parties.**

8.1 **Adequacy of Staffing, Resources, and Expertise.** Throughout the term of this Agreement, the NWPP Corporation will make commercially reasonable efforts to maintain sufficient staffing, resources, and expertise to efficiently and effectively fulfill its obligations under this Agreement, as well as any additional obligations imposed on it by law or other binding arrangements.

8.2 **No Outside Service Commitments That Impair Support Services; Liability Protections.** During the term of this Agreement, the NWPP Corporation will not obligate itself to provide services to any Outside Party (as defined below) in a manner that would impair its ability to efficiently and effectively fulfill its obligations under this Agreement. In addition, the NWPP Corporation will not enter into any agreement to provide services to an Outside Party unless (a) the agreement with the Outside Party contains limitations of liability comparable to those contained in Section 7 of this Agreement, or (b) the NWPP Corporation has or, as of the effective date of the agreement, will have obtained, liability insurance (i) that the NWPP Corporation's Board of Directors determines is adequate to cover potential liability arising from the agreement with the Outside Party and (ii) for which associated costs of premiums and any reserves necessary to cover deductibles or self-insured retention are recovered through charges for the services to which the liability insurance applies.

8.3 **Definition of Outside Party.** For purposes of this Agreement, the term "Outside Party" means an entity that is not a signatory to the Northwest Power Pool Agreement.

8.4 **Agency Agreement Not a Violation.** The Participating Organization acknowledges that as of the Effective Date, the NWPP Corporation is a party to an Agreement Appointing Agent and Establishing Responsibilities Related to Reserve Sharing Group Compliance with BAL-002 (the "Agency Agreement"). The Participating Organization agrees that neither the NWPP Corporation's status as a party to, nor its performance of its obligations under, the Agency Agreement (or any successor or replacement agreement) is in any way contrary to the NWPP Corporation's obligation under Section 8.2 of this Agreement.

9. **General Provisions.**

9.1 **Notices.** Any notice or other communication required or permitted under this Agreement will be deemed properly given if submitted in writing and delivered (a) in person, (b) to a commonly recognized express courier service properly addressed and with delivery charges prepaid, (c) to the United States or Canadian Postal Service properly addressed with proper postage prepaid, or (d) if delivered by the NWPP Corporation generally to one or more Pool Committees and Groups, by any manner regularly used for communications between the NWPP Corporation and the Pool Committees and Groups. Routine communications concerning the Services may be delivered by electronic mail.



- (i) The NWPP Corporation will deliver all notices and other communications under this Agreement to the appropriate representative(s) of the Participating Organization serving on one or more of the Pool Committees and Groups, or in accordance with written instructions provided to the NWPP Corporation by the appropriate representative(s) of the Participating Organization serving on one or more of the Pool Committees and Groups.
- (ii) The Participating Organization will deliver notices under this Agreement to the NWPP Corporation as follows:

Northwest Power Pool
Attention: President
7505 NE Ambassador Place
Suite R
Portland, OR 97220

- (iii) Either party may change the person or address it has designated for notices and other communications under this Agreement by providing written notice of the change to the other party.

9.2 Amendment and Waiver. No provision of this Agreement may be amended except by a written instrument signed by authorized representatives of both parties. The failure of a party to insist upon or enforce the other party's strict performance of any provision of this Agreement or to exercise any right conferred by this Agreement will not be construed as a waiver or relinquishment to any extent of a party's right to assert or rely upon that provision or right on any future occasion. No waiver of any provision of this Agreement will be effective unless stated in writing and signed by an authorized representative of the party granting the waiver.

9.3 Assignment; Successors. Neither party may, without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed), (a) assign this Agreement or any right or interest in this Agreement (except by operation of law), or (b) delegate any of its duties under this Agreement. Subject to the preceding sentence, this Agreement is binding upon and will inure to the benefit of the parties and their successors in interest.

9.4 No Authority to Bind or Act on Behalf of Each Other. Nothing in this Agreement grants any authority to either party to bind or act on behalf of the other party in any respect.

9.5 Order of Precedence. In the case of a conflict between this Agreement and the terms of an Individual Work Order or an Extraordinary Service Work Order, the Individual Work Order or Extraordinary Service Work Order will govern.

9.6 Section Headings. The section headings and titles contained in this Agreement, any Individual Work Order, any Extraordinary Services Work Order, and in any appendix to any of the foregoing, are for the convenience of the parties and are



not intended to affect the meaning or scope of the document in which they appear or to be used in its interpretation.

- 9.7 Severability and Savings Clause.** If any provision of this Agreement, or its application to any person, entity, or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a court or regulatory authority validly exercising jurisdiction over this Agreement, the parties will endeavor in good faith to negotiate an amendment or amendments to this Agreement that will restore the relative benefits and obligations of the parties under this Agreement absent the holding, modification, or condition. The parties agree that they have comparably participated in the preparation and negotiation of this Agreement such that neither party will be deemed the drafter of any term that may subsequently be found to be ambiguous or vague.
- 9.8 No Association, Joint Venture, Trust, or Partnership; No Third-Party Beneficiaries.** Nothing in this Agreement creates an association, joint venture, trust, partnership, or other legal relationship between the NWPP Corporation and the Participating Organization, or imposes a trust or partnership covenant, obligation, or liability on or with regard to the NWPP Corporation or the Participating Organization. This Agreement does not confer any rights on or grant remedies to any third parties as beneficiaries of this Agreement and it does not create any duty or standard of care with respect to any third party.
- 9.9 Counterparts.** This Agreement may be executed in counterparts, which, when taken together, will constitute a fully executed original signed by both parties.

SIGNATURES

NWPP Corporation

Participating Organization

By: _____

By: _____

Seattle City Light

Name of Organization

Jerry Rust

Name

Name of Person Signing

President

Title

Title



Date of Signature:

Date of Signature:



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle City Light	Phil West / 684-3718	Calvin Chow/ 684.4652

Legislation Title:

AN ORDINANCE relating to the City Light Department; authorizing execution of a general services agreement with the Northwest Power Pool Corporation, that clarifies the role of the Northwest Power Pool Corporation with respect to the Northwest Power Pool.

• **Summary of the Legislation:**

A Council Bill that authorizes Seattle City Light Superintendent or his designee, to execute a memorandum of agreement with the Northwest Power Pool Corporation (NWPP Corporation).

Background: The NWPP Corporation is an Oregon nonprofit corporation. The Northwest Power Pool, in the form of the Operating Committee, was established in 1942 to serve as a forum for the Northwest's electric utilities to more effectively coordinate operations and ensure reliability. The memorandum of agreement (MOA) with NWPP Corporation sets forth the terms under which NWPP Corporation will provide services to facilitate the implementation of the Northwest Power Pool Agreement. The funds received by adoption of this Council Bill will allow Seattle City Light to fulfill its obligation to pay its allocated share of fiscal year expenses, consistent with the Annual Budget Forecast, incurred pursuant to the NWPP Agreement.

The previous agreement has been inactive for over ten years. Implementation of the MOA will re-establish the terms governing the relationship between the signatories to the NWPP Agreement and the NWPP Corporation as well as the right to receive services.

- *Please check one of the following:*

This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*





City of Seattle
Office of the Mayor

April 27, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the Seattle City Light Superintendent, or his designee, to execute the Northwest Power Pool General Services Agreement with the Northwest Power Pool Corporation (NWPP Corporation), a nonprofit corporation in the state of Oregon.

The Northwest Power Pool is a forum for the Northwest's electric utilities to effectively coordinate operations and ensure reliability. This legislation will authorize Seattle City Light to enter into a memorandum of agreement that sets forth the terms under which NWPP Corporation will provide services to implement the Northwest Power Pool Agreement and Seattle City Light will pay its ongoing allocated share of costs. The 2010 Appropriation is \$120,864 and the 2011 Anticipated Appropriation is \$123,264.

Thank you for your consideration of this legislation. Should you have questions, please contact Phil West, Customer Care and Energy Delivery Officer for Seattle City Light, at 684-3718 or phil.west@seattle.gov.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

254983
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

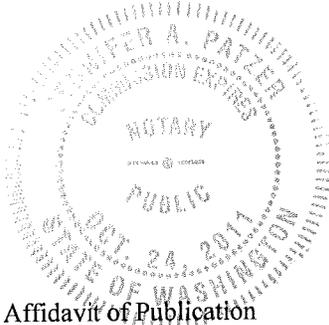
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123300,123302-123304

was published on

05/20/10

The amount of the fee charged for the foregoing publication is the sum of \$ 68.25, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

05/20/10

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following legislation, passed by the City Council on May 10, 2010, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123300

AN ORDINANCE amending the 2009 Adopted Budget, including the 2009-2014 Capital Improvement Program (CIP); changing appropriations to various departments and from various funds in the Budget; and amending the total dollar amounts allocated for projects in the 2009-2014 CIP; all by a three-fourths vote of the City Council.

ORDINANCE NO. 123302

AN ORDINANCE relating to the City Light Department; authorizing execution of a general services agreement with the Northwest Power Pool Corporation, that clarifies the role of the Northwest Power Pool Corporation with respect to the Northwest Power Pool.

ORDINANCE NO. 123303

AN ORDINANCE relating to the Seattle Youth Violence Prevention Initiative; accepting a grant from the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, authorizing the Mayor or his designee to execute related agreements, increasing the appropriations in the 2010 Adopted Budget of the Department of Neighborhoods Youth Violence Prevention BCL by amounts included in the grant and unexpended funds from 2009, and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

ORDINANCE NO. 123304

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by the City Clerk
Date of publication in the Seattle Daily
Journal of Commerce, May 20, 2010.
5/20(254983)

NORTHWEST POWER POOL GENERAL SERVICES AGREEMENT

This Northwest Power Pool General Services Agreement (this “Agreement”) is between the Northwest Power Pool, an Oregon nonprofit corporation (the “NWPP Corporation”), and the counter-party identified on the signature page of this Agreement (the “Participating Organization”) and is effective as of July 7, 2009 (the “Effective Date”).

RECITALS

- A. The Participating Organization is a signatory to the Northwest Power Pool Agreement dated as of December 22, 1995 and amended November 13, 1996, as it may be supplemented, further amended, or superseded from time to time (the “Northwest Power Pool Agreement”).
- B. For each upcoming fiscal year, the committees and groups organized and operating pursuant to the Northwest Power Pool Agreement (the “Pool Committees and Groups”) review a forecast of estimated annual expenditures (the “Annual Budget Forecast”) for the NWPP Corporation to provide services to facilitate the implementation of the Northwest Power Pool Agreement, as more fully described in Section 2.1 of this Agreement. Those NWPP Corporation services for which funding is provided in an Annual Budget Forecast approved by the Pool Committees and Groups are referred to in this Agreement as “Support Services.”
- C. The Participating Organization is obligated to pay its allocated share of fiscal year expenses, consistent with the Annual Budget Forecast, incurred pursuant to the Northwest Power Pool Agreement.
- D. The NWPP Corporation is not a party to the Northwest Power Pool Agreement. Accordingly, although the NWPP Corporation incurs expenses to perform the Support Services and invoices the signatories to the Northwest Power Pool Agreement for their allocated shares of these expenses consistent with the provisions of the Northwest Power Pool Agreement, the NWPP Corporation has no rights under the Northwest Power Pool Agreement to enforce payment obligations. Likewise, the Participating Organization has no rights under the Northwest Power Pool Agreement to receive services from the NWPP Corporation.
- E. The Participating Organization and the NWPP Corporation wish to enter into this Agreement to set forth their respective obligations related to the Support Services.
- F. The NWPP Corporation and the Participating Organization also wish to establish terms under which the NWPP Corporation and the Participating Organization may enter into work orders for the NWPP Corporation to provide additional services, either to the Participating Organization or to Pool Committees and Groups to which the Participating Organization belongs.

Therefore, in consideration of the foregoing and the mutual promises set forth in this Agreement, the Participating Organization and the NWPP Corporation agree as follows:

AGREEMENT

1. Term, Termination, and Survival.

- 1.1 **Term.** This term of this Agreement will be from the Effective Date until it is terminated in accordance with Section 1.2 or Section 1.3 below.
- 1.2 **Termination by Agreement.** This Agreement may be terminated at any time by written agreement of both parties.
- 1.3 **Automatic Termination When the Participating Organization's Obligations Under the Northwest Power Pool Agreement Terminate.** Except for obligations arising out of an Individual Work Order executed pursuant to Section 3.1 or an Extraordinary Services Work Order executed pursuant to Section 3.2, this Agreement will terminate automatically on the date all of the Participating Organization's obligations under the Northwest Power Pool Agreement terminate. For the avoidance of doubt, to the extent the Northwest Power Pool Agreement provides for the Participating Organization's payment obligations to continue after the date on which all of its other rights and obligations under the Northwest Power Pool Agreement terminate, the Participating Organization's obligations under this Agreement will continue for so long as the Participating Organization's payment obligations under the Northwest Power Pool Agreement remain in effect.
- 1.4 **Notice of Withdrawal from Northwest Power Pool Agreement.** If at any time during the term of this Agreement the Participating Organization gives notice of termination under the Northwest Power Pool Agreement, the Participating Organization will deliver to the NWPP Corporation, concurrently or within no more than five business days, a copy of its termination notice.
- 1.5 **Return of Contribution to Operating Cash Reserves.** The NWPP Corporation will return to the Participating Organization, within 30 days following the date on which this Agreement terminates, an amount equal to the Participating Organization's contribution to the operating cash reserves of the NWPP Corporation, net of any amounts owed by the Participating Organization to the NWPP Corporation.
- 1.6 **Survival.** All obligations and liabilities incurred in connection with this Agreement will survive until fully satisfied or discharged, and all limitations of liability provided in this Agreement will survive until all statutes of limitation related to claims that could be made in connection with this Agreement have run. Without limiting the generality of the foregoing, the parties specifically intend that the provisions of Sections 1.5, 1.6, 5, 6, and 7, as well as all obligations that remain to be performed under any Individual Work Order executed pursuant to Section 3.1 or any Extraordinary Services Work Order executed pursuant to Section 3.2, will survive termination of this Agreement.

NORTHWEST POWER POOL GENERAL SERVICES AGREEMENT

This Northwest Power Pool General Services Agreement (this "Agreement") is between the Northwest Power Pool, an Oregon nonprofit corporation (the "NWPP Corporation"), and the counter-party identified on the signature page of this Agreement (the "Participating Organization") and is effective as of July 7, 2009 (the "Effective Date").

RECITALS

- A. The Participating Organization is a signatory to the Northwest Power Pool Agreement dated as of December 22, 1995 and amended November 13, 1996, as it may be supplemented, further amended, or superseded from time to time (the "Northwest Power Pool Agreement").
- B. For each upcoming fiscal year, the committees and groups organized and operating pursuant to the Northwest Power Pool Agreement (the "Pool Committees and Groups") review a forecast of estimated annual expenditures (the "Annual Budget Forecast") for the NWPP Corporation to provide services to facilitate the implementation of the Northwest Power Pool Agreement, as more fully described in Section 2.1 of this Agreement. Those NWPP Corporation services for which funding is provided in an Annual Budget Forecast approved by the Pool Committees and Groups are referred to in this Agreement as "Support Services."
- C. The Participating Organization is obligated to pay its allocated share of fiscal year expenses, consistent with the Annual Budget Forecast, incurred pursuant to the Northwest Power Pool Agreement.
- D. The NWPP Corporation is not a party to the Northwest Power Pool Agreement. Accordingly, although the NWPP Corporation incurs expenses to perform the Support Services and invoices the signatories to the Northwest Power Pool Agreement for their allocated shares of these expenses consistent with the provisions of the Northwest Power Pool Agreement, the NWPP Corporation has no rights under the Northwest Power Pool Agreement to enforce payment obligations. Likewise, the Participating Organization has no rights under the Northwest Power Pool Agreement to receive services from the NWPP Corporation.
- E. The Participating Organization and the NWPP Corporation wish to enter into this Agreement to set forth their respective obligations related to the Support Services.
- F. The NWPP Corporation and the Participating Organization also wish to establish terms under which the NWPP Corporation and the Participating Organization may enter into work orders for the NWPP Corporation to provide additional services, either to the Participating Organization or to Pool Committees and Groups to which the Participating Organization belongs.

Therefore, in consideration of the foregoing and the mutual promises set forth in this Agreement, the Participating Organization and the NWPP Corporation agree as follows:

2. Annual Budget Forecast and Support Services.

- 2.1 **Development and Approval of Annual Budget Forecast.** Not less than 60 days before the start of each fiscal year (beginning with the fiscal year that starts on July 1, 2010 and ends on June 30, 2011), the NWPP Corporation will prepare and present to those Pool Committees and Groups whose approval is required under the Northwest Power Pool Agreement an Annual Budget Forecast. An Annual Budget Forecast will be deemed approved for purposes of this Agreement if (but only if) it is approved in accordance with the voting procedures specified in the Northwest Power Pool Agreement for Pool Committee and Group approval of Annual Budget Forecasts.
- 2.2 **Provision of Support Services.** During the term of this Agreement and subject to Section 2.3, the NWPP Corporation will provide those Support Services to be performed by "NWPP staff" under the Northwest Power Pool Agreement and will make good faith, commercially reasonable efforts to carry out requests and instructions of the Pool Committees and Groups issued in accordance with the Northwest Power Pool Agreement.
- 2.3 **Option to Require Separate Work Order for Major Line Items.** The NWPP Corporation may, at its option, elect not to incur (or obligate itself to incur) costs related to any Major Line Item (as defined below) until there is in place a mutually acceptable work order (a) defining the parties' obligations related to the Support Services covered by the Major Line Item, and (b) executed by the NWPP Corporation and each member of the Pool Committee or Group to which the Support Services covered by the Major Line Item will be provided.
- 2.4 **Definition of Major Line Item.** For purposes of this Agreement, the term "Major Line Item" means an individual line item entry in an Annual Budget Forecast that equals or exceeds 10% of the total Annual Budget Forecast for that fiscal year.

3. Additional Services.

- 3.1 **Requests for Individual Services.** The Participating Organization may, at any time during the term of this Agreement, request that the NWPP Corporation provide to it, on an individual basis (or jointly with other signatories to the Northwest Power Pool Agreement), services that are not included in the Annual Budget Forecast and are in addition to the Support Services. Subject to Section 3.4, the NWPP Corporation will, within a reasonable time following receipt of a request under this Section 3.1, prepare and offer for the Participating Organization's execution a proposed document (an "Individual Work Order") containing the terms and conditions (including scope of work, schedule, and required compensation) under which the NWPP Corporation is willing to offer the requested services, provided the NWPP Corporation believes in good faith that it has adequate staffing, resources, and expertise to provide the requested services without adversely affecting its ability to provide the Support Services according to the standard specified in Section 5. If the NWPP Corporation and the Participating Organization thereafter execute a mutually acceptable Individual Work Order, the services to be

performed under the Individual Work Order will be governed by this Agreement, provided, however, that even if this Agreement terminates, all obligations of the NWPP Corporation and the Participating Organization undertaken pursuant to the Individual Work Order will survive until the Individual Work Order is terminated in accordance with its terms or all obligations of the parties to the Individual Work Order have been satisfied.

3.2 Pool Committee and Group Requests for Extraordinary Support Services. If, at any time during the term of this Agreement, a Pool Committee or Group determines (in accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement) that it wishes the NWPP Corporation to provide services that are not included in the Annual Budget Forecast and constitute Extraordinary Support Services (as defined below), then upon request by the Pool Committee or Group and subject to Section 3.4, the NWPP Corporation will, within a reasonable time following receipt of the request, prepare and offer for execution by the members of the Pool Committee or Group a proposed document (an "Extraordinary Service Work Order") containing the terms and conditions (including scope of work, schedule, and required compensation) under which the NWPP Corporation is willing to offer the Extraordinary Support Services, provided the NWPP Corporation believes in good faith that it has or will have adequate staffing, resources, and expertise to provide the Extraordinary Support Services without adversely affecting its ability to provide the Support Services according to the standard specified in Section 5. If the NWPP Corporation and each member of the applicable Pool Committee or Group thereafter execute a mutually acceptable Extraordinary Service Work Order, the Extraordinary Support Services to be performed under the Extraordinary Service Work Order will be governed by this Agreement, provided, however, that even if this Agreement terminates, all obligations of the NWPP Corporation and members of the applicable Pool Committee or Group undertaken pursuant to the Extraordinary Service Work Order will survive until the Extraordinary Service Work Order is terminated in accordance with its terms or all obligations of the parties to the Extraordinary Service Work Order have been satisfied.

3.3 Definition of Extraordinary Support Services and Additional Services

- (a) **Definition of Extraordinary Support Services.** For purposes of this Agreement, the term "Extraordinary Support Services" means services provided in accordance with Section 3.2 on behalf of a particular Pool Committee or Group that would require an increase in NWPP Corporation aggregate expenditures (measured by total fixed and variable costs of operation, including all employee compensation and benefits) of 5% or more during the term of a Extraordinary Service Work Order (as compared to aggregate expenditures during the same period excluding all costs incurred in connection with the Extraordinary Service Work Order).
- (b) **Definition of Additional Services.** For purposes of this Agreement, the term "Additional Services" means (i) services provided to the Participating Organization pursuant to Section 3.1 or (ii) Extraordinary Support Services

provided to a Pool Committee or Group to which the Participating Organization belongs, or (iii) both of the foregoing together.

- 3.4 Obligation to Offer Comparable Terms.** The NWPP Corporation will not offer to any other signatory to the Northwest Power Pool Agreement an agreement to provide Support Services that contains terms more favorable than those provided in this Agreement without contemporaneously offering to amend this Agreement to include comparably favorable terms. In offering and executing either (a) an Individual Work Order pursuant to Section 3.1, or (b) an Extraordinary Service Work Order pursuant to Section 3.2, the NWPP Corporation will offer to the Participating Organization or the members of the Pool Committee or Group, as applicable, terms and conditions (including required compensation) that are (i) based on the NWPP Corporation's good faith estimate of anticipated costs (measured by total fixed and variable costs of operation, including, without limitation, all employee compensation and benefits) to provide the Additional Services, and (ii) no less favorable than those the NWPP Corporation offers to other parties for substantially similar services.

4. Documentation for Compliance Purposes.

- 4.1 Documentation Concerning Services Provided Under Section 3.1.** If at any time during the term of this Agreement the Participating Organization requests that the NWPP Corporation provide documentation concerning any services provided to the Participating Organization pursuant to Section 3.1 (beyond the terms of the applicable Individual Work Order), the NWPP Corporation will, within a reasonable time following receipt of the request, prepare draft documentation for review by the Participating Organization and will thereafter make good faith, commercially reasonable efforts to develop final documentation acceptable to the Participating Organization. If requested by the Participating Organization, the NWPP Corporation will execute and include as an appendix to the related Individual Work Order any documentation requested and approved by the Participating Organization under this Section 4.1. The NWPP Corporation will treat any costs it incurs to provide documentation requested under this Section 4.1 as costs to be recovered under the applicable Individual Work Order.
- 4.2 Documentation Concerning Support Services or Extraordinary Support Services.** If at any time during the term of this Agreement a Pool Committee or Group determines (in accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement) that it is necessary or beneficial, for regulatory compliance or other business purposes, that there be formal documentation concerning any Support Services or Extraordinary Support Services provided by the NWPP Corporation under this Agreement, then upon request by the Pool Committee or Group, the NWPP Corporation will, within a reasonable time following receipt of the request, prepare draft documentation for review by the Pool Committee or Group and will thereafter make good faith, commercially reasonable efforts to develop final documentation acceptable to the applicable Pool Committee or Group (as determined in accordance with the procedures applicable to the Pool Committee or Group under the Northwest Power Pool Agreement). If requested by a Pool Committee or

Group, the NWPP Corporation will offer to execute and, at the Participating Organization's option, include as an appendix to this Agreement, any documentation requested and approved by that Pool Committee or Group under this Section 4.2. The NWPP Corporation will treat any costs it incurs to provide documentation requested under this Section 4.2 either (a) as costs to be recovered for Support Services if the documentation relates to Support Services, or (b) as costs to be recovered under an Extraordinary Service Work Order if the documentation relates to Extraordinary Support Services.

5. **Standard of Service.** The NWPP Corporation will provide the Support Services and any Additional Services, and will prepare, deliver, and maintain documentation requested under Section 4 of this Agreement (all of the foregoing collectively, the "Services"), in an efficient and expeditious manner, using the skills and abilities necessary to provide the Services in conformance with applicable law and professional standards generally expected of businesses providing services of a similar type. ***EXCEPT AS PROVIDED IN THIS SECTION, THE NWPP CORPORATION MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO THE SERVICES AND THE NWPP CORPORATION DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*** This Section 5 governs, modifies, and supersedes any other terms in this Agreement or other matters, including course of conduct, that may be construed to address warranties or guarantees or the quality of the Services.
6. **Compensation and Billing.**
 - 6.1 **Compensation and Billing for Support Services.** During the term of this Agreement, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of Support Services, so long as the invoices are consistent with applicable terms of the Northwest Power Pool Agreement.
 - 6.2 **Compensation and Billing Related to Individual Work Orders.** During the term of any Individual Work Order executed by the NWPP Corporation and the Participating Organization pursuant to Section 3.1, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of services under the Individual Work Order.
 - 6.3 **Compensation and Billing Related to Extraordinary Services Work Orders.** During the term of any Extraordinary Services Work Order executed by the NWPP Corporation and any Pool Committee or Group to which the Participating Organization belongs, the Participating Organization will remit payment to the NWPP Corporation in accordance with payment invoices issued by the NWPP Corporation for the provision of services under the Extraordinary Services Work Order.

6.4 **Invoices.** The Participating Organization may, by written notice to the NWPP Corporation, inform the NWPP Corporation as to whether it wishes Services provided to it (or any Pool Committee or Group to which it belongs) under this Agreement to be billed to it by separate invoice for each category of Service or in a single combined invoice. If the Participating Organization does not notify the NWPP Corporation of its preference with respect to separate or combined invoices, the NWPP Corporation may choose the manner in which it invoices the Participating Organization, but if it uses a combined invoice, the NWPP Corporation will identify separately on the invoice the amounts due for Support Services, services provided pursuant to Section 3.1, and Extraordinary Support Services.

7. **Limitation of Liability.**

7.1 **Release of the NWPP Corporation from Liability and Covenant Not to Sue.**

Except as specifically provided otherwise in Section 7.2, the Participating Organization irrevocably releases the NWPP Corporation from, and covenants not to sue the NWPP Corporation with respect to, any damages, losses, liability, claims, demands, remedies, and causes of action of any kind whatsoever (collectively, "Claims") arising from any action or failure to act by the NWPP Corporation in connection with this Agreement or the Services. The foregoing release and covenant not to sue includes all Claims based on corporate law, tort, tortious course of conduct, contract, obligations of "good faith," public policy, common law, equity, or any other legal theory and applies to all actual, direct, special, punitive, exemplary, consequential, incidental, and indirect losses and damages, including those based on lost or prospective profits, inaccurate, damaged, lost, or incomplete data, expenses, fines, penalties, interest, assessments, judgments, attorneys' and investigative fees and costs, and all other equitable, compensatory, or punitive relief.

7.2 **Right to Specific Performance; Exception for Willful Action.**

The NWPP Corporation acknowledges that in the event of a breach of this Agreement by the NWPP Corporation, the Participating Organization's release of the NWPP Corporation from liability and covenant not to sue for damages eliminates the primary recourse for the Participating Organization. Accordingly, the NWPP Corporation acknowledges and agrees that the Participating Organization will be entitled to injunctive relief to prevent a breach by the NWPP Corporation and to compel specific performance of the NWPP Corporation's obligations under this Agreement, without the posting of any bond and without proof of any actual damages. The NWPP Corporation will not oppose the granting of injunctive relief in accordance with this Section 7.2. The release and covenant not to sue in Section 7.1 does not apply to (a) any action against the NWPP Corporation seeking specific performance of this Agreement, or (b) Claims based on the NWPP Corporation's Willful Action. As used in the foregoing sentence, the term "Willful Action" means an action taken or not taken by the NWPP Corporation that is (i) knowingly or intentionally taken or not taken with intent to cause resulting injury or damage or (ii) wantonly reckless. Willful Action does not include any act or failure to act that is involuntary, accidental, negligent, or grossly negligent.

8. **Adequacy of NWPP Corporation Resources; No Conflicting Obligations; Liability Protections in Agreements with Outside Parties.**

8.1 **Adequacy of Staffing, Resources, and Expertise.** Throughout the term of this Agreement, the NWPP Corporation will make commercially reasonable efforts to maintain sufficient staffing, resources, and expertise to efficiently and effectively fulfill its obligations under this Agreement, as well as any additional obligations imposed on it by law or other binding arrangements.

8.2 **No Outside Service Commitments That Impair Support Services; Liability Protections.** During the term of this Agreement, the NWPP Corporation will not obligate itself to provide services to any Outside Party (as defined below) in a manner that would impair its ability to efficiently and effectively fulfill its obligations under this Agreement. In addition, the NWPP Corporation will not enter into any agreement to provide services to an Outside Party unless (a) the agreement with the Outside Party contains limitations of liability comparable to those contained in Section 7 of this Agreement, or (b) the NWPP Corporation has or, as of the effective date of the agreement, will have obtained, liability insurance (i) that the NWPP Corporation's Board of Directors determines is adequate to cover potential liability arising from the agreement with the Outside Party and (ii) for which associated costs of premiums and any reserves necessary to cover deductibles or self-insured retention are recovered through charges for the services to which the liability insurance applies.

8.3 **Definition of Outside Party.** For purposes of this Agreement, the term "Outside Party" means an entity that is not a signatory to the Northwest Power Pool Agreement.

8.4 **Agency Agreement Not a Violation.** The Participating Organization acknowledges that as of the Effective Date, the NWPP Corporation is a party to an Agreement Appointing Agent and Establishing Responsibilities Related to Reserve Sharing Group Compliance with BAL-002 (the "Agency Agreement"). The Participating Organization agrees that neither the NWPP Corporation's status as a party to, nor its performance of its obligations under, the Agency Agreement (or any successor or replacement agreement) is in any way contrary to the NWPP Corporation's obligation under Section 8.2 of this Agreement.

9. **General Provisions.**

9.1 **Notices.** Any notice or other communication required or permitted under this Agreement will be deemed properly given if submitted in writing and delivered (a) in person, (b) to a commonly recognized express courier service properly addressed and with delivery charges prepaid, (c) to the United States or Canadian Postal Service properly addressed with proper postage prepaid, or (d) if delivered by the NWPP Corporation generally to one or more Pool Committees and Groups, by any manner regularly used for communications between the NWPP Corporation and the Pool Committees and Groups. Routine communications concerning the Services may be delivered by electronic mail.

- (i) The NWPP Corporation will deliver all notices and other communications under this Agreement to the appropriate representative(s) of the Participating Organization serving on one or more of the Pool Committees and Groups, or in accordance with written instructions provided to the NWPP Corporation by the appropriate representative(s) of the Participating Organization serving on one or more of the Pool Committees and Groups.
- (ii) The Participating Organization will deliver notices under this Agreement to the NWPP Corporation as follows:

Northwest Power Pool
Attention: President
7505 NE Ambassador Place
Suite R
Portland, OR 97220

- (iii) Either party may change the person or address it has designated for notices and other communications under this Agreement by providing written notice of the change to the other party.

9.2 Amendment and Waiver. No provision of this Agreement may be amended except by a written instrument signed by authorized representatives of both parties. The failure of a party to insist upon or enforce the other party's strict performance of any provision of this Agreement or to exercise any right conferred by this Agreement will not be construed as a waiver or relinquishment to any extent of a party's right to assert or rely upon that provision or right on any future occasion. No waiver of any provision of this Agreement will be effective unless stated in writing and signed by an authorized representative of the party granting the waiver.

9.3 Assignment; Successors. Neither party may, without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed), (a) assign this Agreement or any right or interest in this Agreement (except by operation of law), or (b) delegate any of its duties under this Agreement. Subject to the preceding sentence, this Agreement is binding upon and will inure to the benefit of the parties and their successors in interest.

9.4 No Authority to Bind or Act on Behalf of Each Other. Nothing in this Agreement grants any authority to either party to bind or act on behalf of the other party in any respect.

9.5 Order of Precedence. In the case of a conflict between this Agreement and the terms of an Individual Work Order or an Extraordinary Service Work Order, the Individual Work Order or Extraordinary Service Work Order will govern.

9.6 Section Headings. The section headings and titles contained in this Agreement, any Individual Work Order, any Extraordinary Services Work Order, and in any appendix to any of the foregoing, are for the convenience of the parties and are not intended to affect the meaning or scope of the document in which they appear or to be used in its interpretation.

- 9.7 **Severability and Savings Clause.** If any provision of this Agreement, or its application to any person, entity, or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a court or regulatory authority validly exercising jurisdiction over this Agreement, the parties will endeavor in good faith to negotiate an amendment or amendments to this Agreement that will restore the relative benefits and obligations of the parties under this Agreement absent the holding, modification, or condition. The parties agree that they have comparably participated in the preparation and negotiation of this Agreement such that neither party will be deemed the drafter of any term that may subsequently be found to be ambiguous or vague.
- 9.8 **No Association, Joint Venture, Trust, or Partnership; No Third-Party Beneficiaries.** Nothing in this Agreement creates an association, joint venture, trust, partnership, or other legal relationship between the NWPP Corporation and the Participating Organization, or imposes a trust or partnership covenant, obligation, or liability on or with regard to the NWPP Corporation or the Participating Organization. This Agreement does not confer any rights on or grant remedies to any third parties as beneficiaries of this Agreement and it does not create any duty or standard of care with respect to any third party.
- 9.9 **Counterparts.** This Agreement may be executed in counterparts, which, when taken together, will constitute a fully executed original signed by both parties.

SIGNATURES

NWPP Corporation

Participating Organization

By: *Jerry Rust*

By: *Jorge Carrasco*

Jerry Rust
Name

Seattle City Light
Name of Organization

President
Title

Jorge Carrasco
Name of Person Signing

Superintendent
Title

Date of Signature: *07-02-2010*

Date of Signature: *6/28/10*