



INTERLOCAL COOPERATION AGREEMENT NORTHWEST OPEN ACCESS NETWORK

The parties named below (each, a "Member" or "party," and collectively, the "Members" or "parties") hereby enter into this Interlocal Cooperation Agreement (this "Agreement") pursuant to Revised Code of Washington ("RCW") 39.34.030.

1. **PARTIES.** The parties are as follows:

- Public Utility District No. 1 of Benton County
- Public Utility District No. 1 of Chelan County
- Public Utility District No. 1 of Clallam County
- Public Utility District No. 1 of Douglas County
- Public Utility District No. 1 of Ferry County
- Public Utility District No. 1 of Franklin County
- Public Utility District No. 2 of Grant County
- Public Utility District No. 1 of Kittitas County
- Public Utility District No. 1 of Lewis County
- Public Utility District No. 3 of Mason County
- Public Utility District No. 1 of Okanogan County
- Public Utility District No. 2 of Pacific County
- Public Utility District No. 1 of Skamania County
- Public Utility District No. 1 of Whatcom County
- Energy Northwest

Each of the public utility districts is established and operated pursuant to RCW 54. Energy Northwest is a joint operating agency established and operated pursuant to RCW 43.52. Each of the parties is a "public agency" as defined by RCW 39.34.020, and they enter into this Agreement and mutually promise and agree to the terms and conditions described herein.

2. **PURPOSES.** The purpose of this Agreement is to create a Washington nonprofit mutual corporation in accordance with RCW 39.34.030, which corporation shall be a non-stock corporation, the members of which are all public agencies within the meaning of RCW 39.34.020, and such corporation to have the following purposes:

- a. To assist in the efficient management of load, conservation, and acquisition of electrical energy, and other utility purposes, by participating in the development and efficient use of a communications network licensed or leased from or shared with the Bonneville Power Administration and/or any other source, or otherwise owned, acquired or used by the corporation for use by the Members and others as provided by law;

b. To assist the Members, including those in rural areas, in adapting high speed information technology systems to their needs;

c. Allow the sharing of resources to provide cost-effective high technology communications facilities and other services for use by the Members to this Agreement on an at-cost basis to those who make their networks available to all providers and users (i.e., who provide open access), and by others as provided by law, denying such access only due to a provider's or user's activity in connection with the use of the network that is prohibited by law or for failure to pay any compensation due for such access;

d. Through use of such network, improve the Members' ability to maximize the productivity of their assets and continue to provide efficient and economical service to customers including but not limited to making excess network capacity available to other parties where network capacity has been acquired in light of the Members' present and reasonably anticipated future needs;

e. To do any and all lawful activities that may be necessary, useful or desirable for the furtherance, accomplishment, fostering or attainment of the foregoing purposes, either directly or indirectly and either alone or in conjunction or cooperation with others, whether such others be natural persons or organizations of any kind or nature, such as corporations, municipal corporations, firms, partnerships, limited liability companies, all purpose entities (as and if such form of enterprise is available under applicable law), associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies; and

f. To engage in any lawful activity for which a nonprofit mutual corporation may be organized under the Nonprofit Miscellaneous and Mutual Corporation Act and as otherwise permitted by law.

3. ORGANIZATION.

a. The efforts contemplated by the parties to carry out the purposes of this Agreement shall be undertaken by the formation of a Washington nonprofit mutual corporation (the "corporation") pursuant to the provisions of Chapter 24.06 RCW and as contemplated by RCW 39.34.030(3)(b). The Articles of Incorporation and Bylaws of such nonprofit mutual corporation (referred to herein respectively as the "Articles of Incorporation" and the "Bylaws," and together as the "Charter Documents") shall be in the form of that attached hereto and incorporated herein by this reference, subject to change to reflect different composition of the initial Board of Directors, as provided in paragraph b below, and subject to amendment as provided therein and/or by applicable law. Capitalized terms used herein not otherwise defined herein shall have the meanings given them in the Charter Documents.

b. Article V of the Articles of Incorporation specifies the seven members of the initial Board of Directors, each of whom is an employee of an entity which is listed as a party to this Agreement. If any such entity does not execute this Agreement by January 31, 2000, that entity's employee shall not be a member of the initial Board of Directors, and his or her replacement shall be selected by a majority vote of the Management Committee established by the Washington Public Utility Districts' Association for the Joint Internet Project. Such



replacements for persons specified as members of the initial Board of Directors must be employees of an entity that signed this Agreement by January 31, 2000 other than any entity which already has an employee on the initial Board of Directors.

c. Article III of the Articles of Incorporation may not be amended to effect a material change to the purposes for which the corporation is to be formed without a prior identical amendment to Section 2 of this Agreement.

4. FINANCING; BUDGET. It is anticipated that the activities of the corporation will be financed by operating revenues and from the proceeds of loans borrowed from commercial lenders or other sources which may require guarantees from the Members. The Members agree to provide such guarantees (and new Members shall agree to provide such guarantees, or indemnities, with regard thereto) in the form or forms approved by the Board of Directors as provided in and subject to the provisions of the Charter Documents. Funds provided by other persons for the formation and organization expenses, initial operating expenses and equipment, facilities and similar requirements of the corporation shall be repaid from the proceeds of such loans. The officers of the corporation shall prepare periodic budgets, which budgets shall be presented to and subject to ratification by the Board of Directors.

5. NEW MEMBERS. New Members may be added in accordance with the Charter Documents, provided that each such new Member shall execute a counterpart of this Agreement.

6. EFFECTIVENESS; DURATION.

a. This Agreement shall become effective and commence upon its execution by parties which are designated on Schedule A to the Bylaws as holding Percentage Interests of at least 75% in the aggregate (which must occur not later than January 31, 2000) and the filing of this Agreement as required by law. Subject to the foregoing sentence, the parties executing this Agreement by January 31, 2000 hereby consent to an adjustment increasing the percentages and amounts in Schedule A to the Bylaws on a pro-rata basis (i.e., each such executing party's adjustment to be proportional to its share of the Percentage Interests specified for all such executing parties) for the purpose of allocating among such executing parties the percentages and amounts of any entity designated as a party which has not executed this Agreement by January 31, 2000. An entity designated as a party which has not signed this Agreement by January 31, 2000 may thereafter apply to become a Member of the corporation as provided in the Charter Documents.

b. This Agreement shall remain in full force and effect until such time as the corporation dissolves and is wound up pursuant to the Charter Documents and applicable law, provided that any Member may withdraw from this Agreement at any time by complying with the provisions of the Charter Documents with regard to withdrawal.

7. TERMINATION; DISPOSITION OF PROPERTY. This Agreement may not be terminated except as provided in Section 6 above. This Agreement shall terminate with respect to any Member upon termination of that Member's membership in the corporation in accordance with and subject to the applicable provisions of the Charter Documents. Distributions of property of the corporation to Members prior to dissolution and winding up of the corporation



shall be made in accordance with the applicable provisions of the Charter Documents and applicable law. Upon dissolution and winding up of the corporation, and termination of this Agreement with respect to all the parties, any property of the corporation remaining after satisfaction of the requirements of applicable law, shall be distributed to the Members in accordance with the provisions of the Charter Documents. Notwithstanding any other provision of this Agreement, no part of the earnings of this corporation may accrue to the benefit of any private person or corporation, but only to the Members.

8. MODIFICATION. This Agreement may only be modified or amended by written amendment and modification approved by each of the parties.

9. DISPUTE RESOLUTION; ATTORNEYS' FEES AND COSTS. The parties shall execute their rights and discharge their duties as set forth in this Agreement in good faith with the objective of acting to achieve the efficient and cost-effective operation of the network. The parties shall attempt to resolve any disputes arising from the terms of this Agreement. In the event of a dispute, the parties' designees shall consult and exercise reasonable efforts to arrive at an amicable resolution of the dispute. Failing that, in any suit, action or other proceeding at law or in equity to interpret, enforce, or implement any of the terms, covenants, or conditions of this Agreement, the party prevailing in such suit, action or proceeding shall be paid all of its reasonable attorneys' fees and costs, including on any appeal, by the losing party or parties. If there is no prevailing party, the parties to the dispute shall each bear their own attorneys' fees and costs.

10. PRIOR AGREEMENTS. This document embodies the entire Agreement among the Members. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, among the Members relating to the subject matter of this Agreement.

11. SEVERABILITY. If a provision of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

12. COUNTERPARTS. For the convenience of the Members this Agreement may be executed in counterparts, and each shall be considered an original when the signature of each party has been obtained.

13. GOVERNING LAW. This Agreement shall be governed and interpreted under the laws of the State of Washington.

14. JURISDICTION; VENUE. The parties consent to the personal jurisdiction of the courts of the State of Washington with respect to any lawsuit to interpret or enforce this Agreement. The venue of any such lawsuit shall be King County, Washington unless otherwise agreed by the parties.



15. ASSIGNMENT; THIRD PARTIES. The parties shall not assign their interests or obligations under this Agreement without the prior written consent of the other parties, except as may otherwise be provided in the Bylaws. This Agreement shall inure to the benefit of and shall bind the respective assigns. There are no unspecified third party beneficiaries of this Agreement, and nothing contained in this Agreement is intended to confer any right or interest on anyone other than the parties, their respective successors, assigns and legal representatives.

16. WAIVER. No provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

17. SIGNATURES. Each party to this Agreement represents that it has the authority to execute this Agreement and that it has been duly authorized to enter into this Agreement and that the person executing this Agreement on its behalf is authorized to do so.

(The remainder of this page has been intentionally left blank)



IN WITNESS WHEREOF the Members hereto have executed this Agreement on the date noted adjacent to the signatures hereto.

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY

Date: January __, 2000

By _____
Manager

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

Date: January __, 2000

By _____
Manager/Chief Executive Officer

PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY

Date: January __, 2000

By _____
Manager

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY

Date: January __, 2000

By _____
Manager

PUBLIC UTILITY DISTRICT NO. 1 OF FERRY COUNTY

Date: January __, 2000

By _____
Manager

PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

Date: January 23, 2000

By *[Signature]*
Manager

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

Date: January __, 2000

By _____
Manager