

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is made by and between Public Utility District No. 1 of Pend Oreille County (“District”) and the City of Newport, Washington (“City”). The District and the City are herein referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The District is a public utility district and municipal corporation governed by Title 54 of the Revised Code of Washington (“RCW”).
- B. The City is a non-charter code city and municipal corporation organized under Title 35A RCW.
- C. The District and the City are “Public Agencies” authorized to exercise the authority granted by RCW 39.34 (the Interlocal Cooperation Act).
- D. The District may enter into an Interlocal Agreement with the City to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The Parties desire that the District will provide project management, contracted services and construction, funding, and in-kind support for the City’s improvements to its Newport RV Park (the “Project”) located at the City’s rodeo grounds in Newport, Washington (the “Site”), and that the City will make and perform reciprocal commitments as a condition to that funding and support. The District is supportive of this Project as it is likely to provide recreational value under the District’s Revised Recreation Management Plan for the Box Canyon Hydroelectric Project (FERC No. 2042).

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein, the mutual benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

- 1. **Term.** This Agreement will become effective upon execution by both Parties and shall remain in effect until the earlier of: (a) June 1, 2023; (b) the date on which the City revokes the site license granted by this Agreement; (c) the date on which the Parties mutually agree to terminate this Agreement; (d) upon thirty (30) days’ notice of termination by either Party; or (e) a Party breaches this Agreement and fails to cure such breach within ten (10) days following receipt of written notice of breach provided by the other Party. The date on which this Agreement terminates shall be referred to herein as the “Termination Date.”
 - 1.1 **Lack of Funding.** This Agreement is contingent upon District funding and District appropriations, which shall be within the sole discretion of the District’s Board of Commissioners. In the event that funding from any source is withdrawn, reduced, limited or not appropriated after the Effective Date of this Agreement, this Agreement may be terminated by either Party with proper notice as identified in

Section 1(d) above. In that event, the City shall not be entitled to any claim for damages or other relief relating to the District's termination due to lack of funding.

2. **Site License Granted.** For the Term of this Agreement, the City hereby grants the District a limited and revocable license to use the Site for the District's performance of the Work identified in Section 3 below. The District may perform work, construction, alterations, repairs, modifications, or improvements to the Site in order to accomplish the Work as defined herein, and effectuate the terms and conditions of this Agreement. In the event the City revokes this license before completion of the Work, the District will have no further obligation to perform any further Work, and the City shall reimburse the District for all costs (including, but not limited to, costs of all materials, labor, and contracted services) that the District has incurred for the Work.

3. **District Support for the Project.**

3.1 **Site Improvements.** The District will provide all project management, contracting/procurement, and funding for the following general scope of activities (the "Work") subject to the limitations identified in Section 1.1 above:

- (A) Final Design, Permitting and Engineering Support. The District will assist the City in finalizing any designs, engineering, and permits necessary to complete the Work.
- (B) Sewer and Water Completion. The District will assist the City in completing its sewer and water hookups and pump-out facilities.
- (C) Asphalt and Concrete Pad Installation. The District will provide asphalt and curbing throughout the Site, as depicted on Appendix A, attached hereto and by this reference incorporated herein. Concrete pads will be placed around each utility hookup and other areas as coordinated with the City's Public Works Director.
- (D) Construction of Restroom and Shower Facility. The District will provide one bathroom and shower facility. The location of this facility will be coordinated with the City's Public Works Director so as to not interfere with other users in and around the Site.
- (E) Beautification, Landscaping, Fencing, Signage. The District will provide landscaping, fencing, and signage identifying the City and the District as primary sponsors, for the Site so that it is aesthetically pleasing.

3.2 **Procurement of Contractors.** The District will work directly with contractors and vendors through state-mandated public works, permitting, and payment processes to manage and direct the bidding process for the Work. The City will support the District in ensuring the Work to be performed at the Site is properly permitted and contracting and procurement obligations are satisfied. The District will utilize drawings, surveys, and other engineering/design documents that the City has previously developed for the Work. The District may coordinate with the City to

request additional engineering/design services through the City's existing contracts.

3.3 Project Management and Coordination. The District will provide a Project Manager to oversee and direct the Work on the Project. The City agrees to coordinate and collaborate with the District's Project Manager on all design and technical aspects of the Work, to ensure timely and faithful completion of the Project. The Project Manager will regularly report to District Management and the City's Public Works Director on Project progress. The District's Project Manager shall lead the design and construction process, and all decisions regarding the Work shall require the Project Manager's approval.

4. Maintenance. Upon the earlier of (a) the District's completion of the Work; (b) the City's revocation of the license granted in Section 2; or (c) the termination of this Agreement, the District will turn over the Site, with all Project improvements, to the City. The District will retain no legal interest or obligation in the Site or the Project, and assumes no duty to maintain the Site or the Project. The City is fully responsible for all ongoing maintenance and support for the Site and the Project upon turnover by the District.

5. Indemnity and Hold Harmless.

5.1 To the fullest extent permitted by law, the City will indemnify, defend, and hold harmless the District and its officers, directors, employees, affiliates, successors (collectively, "District Indemnified Party") against any and all losses, damages, liabilities, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by District Indemnified Party (collectively, "Losses"), to the extent caused by:

- (A) breach or non-fulfillment of any provision of this Agreement by the City or the City's agents, employees, subcontractors, or representatives (collectively "City Personnel");
- (B) any negligent or more culpable act or omission of the City or City Personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (C) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of the City or City Personnel (including any reckless or willful misconduct); or
- (D) any failure by the City or City Personnel to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under this Agreement.

The City's obligations under this Section will not apply to Losses caused by or resulting from the sole negligence of District Indemnified Party or District Indemnified Party's agents or employees. The City's obligations under this Section will apply to Losses caused

by or resulting from the concurrent negligence of the City and District Indemnified Party (including, respectively, each of their agents and employees) only to the extent of the City's negligence. The Parties agree that this Section has been mutually negotiated.

The City's obligations under this Section will extend solely to claims made prior to the Termination Date of this Agreement.

5.2 To the fullest extent permitted by law, the District will indemnify, defend, and hold harmless the City and its officers, directors, employees, affiliates, successors (collectively, "City Indemnified Party") against any and all losses, damages, liabilities, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by City Indemnified Party (collectively, "Losses"), to the extent caused by:

- (A) breach or non-fulfillment of any provision of this Agreement by the District or the District's agents, employees, subcontractors, or representatives (collectively "District Personnel");
- (B) any negligent or more culpable act or omission of the District or District Personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (C) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of the District or District Personnel (including any reckless or willful misconduct); or
- (D) any failure by the District or District Personnel to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under this Agreement.

The District's obligations under this Section will not apply to Losses caused by or resulting from the sole negligence of the City Indemnified Party or the City Indemnified Party's agents or employees. The District's obligations under this Section will apply to Losses caused by or resulting from the concurrent negligence of the District and the City Indemnified Party (including, respectively, each of their agents and employees) only to the extent of the District's negligence. The Parties agree that this Section has been mutually negotiated.

The District's obligations under this Section will extend solely to claims made prior to the Termination Date of this Agreement.

6. Insurance.

6.1 During the term of this Agreement, each Party shall maintain in force at its own expense, each insurance noted below:

- (A) Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$1,000,000;
- (B) General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage with a per project aggregate limit of at least \$2,000,000.
 - (i) Each Party's General Liability policies shall be endorsed naming the other Party, its officials, directors, officers, employees and agents as additional insureds under such policies.
- (C) Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice to the other Party.

- 6.2** The City shall be named as an additional insured in all insurance contracts with respect to work performed on the Project under this Agreement. Applicable certificates of insurance shall be provided to City prior to the commencement of any work on City property by a vendor, contractor or subcontractor.
- 6.3** This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington, or by a Public Entity Insurance Pool, authorized by Ch. 48.62 RCW.

7. Notices. Any notice or communication required by this Agreement must be in writing and signed (or sent, if via email) by a person duly authorized to provide such notice. Such notice shall be deemed sufficient if delivered (a) in person; (b) by regular mail, postage prepaid; (c) by certified or registered mail, or by overnight courier, postage prepaid and return receipt requested; or (d) by email, addressed to the respective contact of the Parties as set forth below, or as may be revised by like notice from time to time:

<p>If to the District:</p> <p>Pend Oreille PUD Attn: General Counsel P.O. Box 190 130 N. Washington Newport, WA 99156 By email: notices@popud.org With copy to: twhitney@popud.org</p>	<p>If to the City:</p> <p>City of Newport Attn: City Administrator 200 S. Washington Ave. Newport, WA 99156 By email: cityofnewport@newport-wa.org</p>
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All notices shall be deemed to have been duly given (a) when delivered in person; (b) three (3) business days after the date of mailing by regular mail, postage prepaid; (c) upon receipt after dispatch by registered or certified mail, postage prepaid, or (d) upon confirmation of a read receipt or delivery receipt when transmitted via email.

8. Miscellaneous.

- 8.1 Dispute Resolution.** In the event of any dispute between the Parties arising from this Agreement, the terms of this Agreement will control. This Agreement will be interpreted and enforced according to the laws of the State of Washington. All disputes, claims, and controversies between the Parties arising out of or related to this Agreement, including, without limiting the generality of the foregoing, any claim of misrepresentation, breach, or non-performance, all of which are herein designated as “disputes,” will be resolved through arbitration by a single neutral arbitrator, in accordance with the Washington Uniform Arbitration Act (Chapter 7.04A RCW). A single neutral arbitrator will be selected by mutual consent of the Parties. If such an arbitrator cannot be agreed upon, the procedure identified in RCW 7.04A.110 will apply. Arbitration will occur in Pend Oreille County, Washington. In any arbitration between the Parties arising from this Agreement, the prevailing Party will be entitled to recover its reasonable fees and costs, including all arbitration costs, arbitrator fees, witness fees, collection expenses, attorneys’ fees, and other related costs. The Arbitrator will not have authority to award punitive damages.
- 8.2 Entire Agreement.** This Agreement constitutes the sole agreement of the Parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the Parties. It may not be modified except in a writing signed by the Parties.
- 8.3 Compliance with Applicable Laws.** Both Parties will comply with all applicable federal, state, and local laws and regulations.
- 8.4 No Assignment.** Neither Party may assign this Agreement without the other Party’s prior written consent, which must not be unreasonably withheld. The District’s entering into contracts with contractors or subcontractors is not considered an assignment.
- 8.5 No Waiver.** If either Party fails to require the other to perform any term of this Agreement, that failure does not prevent the Party from later enforcing that term. If either Party waives the other’s breach of a term, that waiver is not treated as waiving a later breach of the term.
- 8.6 Successors and Representatives.** This Agreement binds and inures to the benefit of the Parties and their respective heirs, personal representatives, successors, and (where permitted) assignees.
- 8.7 Severability.** If any part of this Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

- 8.8 **“Including.”** Unless the context requires otherwise, the term “including” means “including but not limited to.”
- 8.9 **Calculation of Time.** If any time period specified herein expires on a Saturday, Sunday, or legal holiday, such time period will be automatically extended through the close of business on the next regular business day.
- 8.10 **Headings.** Headings are for convenience only and do not affect the interpretation of this Agreement.
- 8.11 **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

9. **Chapter 39.34 RCW Required Clauses.**

- 9.1 **Purpose.** See Recital clauses and provisions above.
- 9.2 **Duration.** See Section 1 above.
- 9.3 **Organization of Separate Entity and Its Powers.** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- 9.4 **Responsibilities of the Parties.** See provisions above.
- 9.5 **Agreement to be Filed.** The District shall file this Agreement with the Pend Oreille County Auditor or place it on its website or other electronically retrievable public source. The City shall file this Agreement with the Pend Oreille County Auditor or place this Agreement on its website or other electronically retrievable public source.
- 9.6 **Financing.** Each Party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- 9.7 **Termination.** See Section 1 above.
- 9.8 **Property Upon Termination.** Unless otherwise provided herein or by separate written agreement between the Parties, title to all property acquired by any Party, or jointly acquired by the Parties, in the performance of this Agreement shall remain with the City upon termination of this Agreement.

[signature page follows]

APPENDIX A

CITY OF NEWPORT
RV PARK
 1221 W 1ST STREET
 NEWPORT, WA 99156

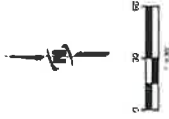


PARK INFORMATION:

- AMENITIES INCLUDE WATER, SEWER, ELECTRIC AND WIFI AT EACH SITE
- ALL SITES ARE PULL THROUGH AND MEASURE 20x70

NEARBY ATTRACTIONS:

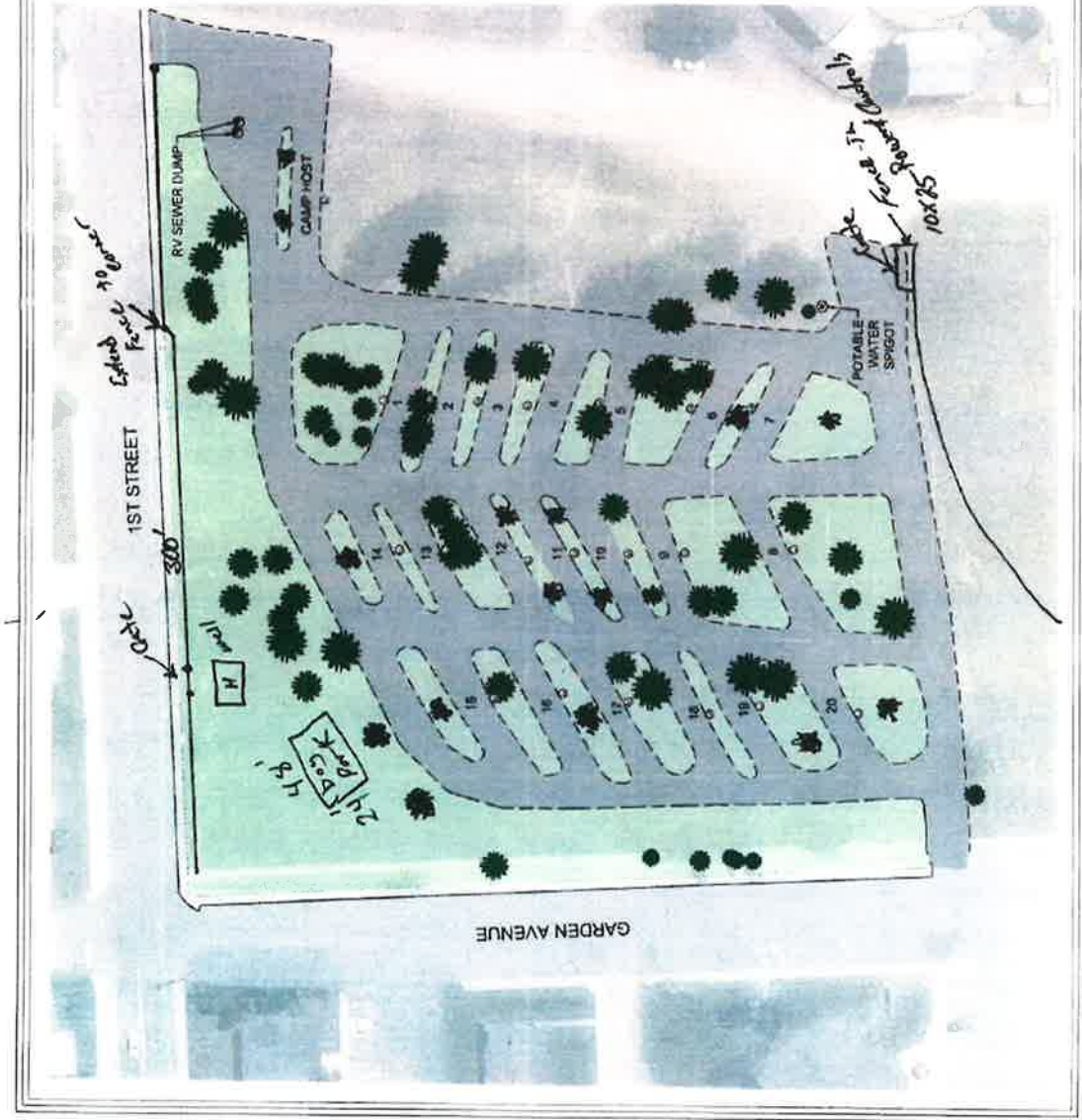
- CITY PARK
- SPRAY PARK
- SKATE PARK
- BMX PARK
- BASEBALL & SOFTBALL FIELDS
- WOLF HIKING TRAILS
- PEND ORGELLE RIVER
- HUNTING & FISHING



LEGEND

- TREE - SIZE AND TYPE MAY VARY
- ⊙ POTABLE WATER SPIGOT
- ⊙ UTILITY HOOK UPS - WATER, ELECTRIC, SEWER
- RV SEWER DUMP
- ⌈ GRAVEL/DIRT TRAVEL AREA
- ▭ ROADWAY
- ▭ SIDEWALK

- # Proposed tree
- 21 Concrete Saver Dig Pads 3'x3'
- 1 RV Sewer, water pad 5'x10'



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year last written below.

DocuSigned by:
F. Colin Willenbrock
142052311128410
Public Utility District No. 1
of Pend Oreille County

Shirley Sands
City of Newport

By: F. Colin Willenbrock
Title: General Manager
Date: 10/6/2021

By: Shirley Sands
Title: Mayor
Date: 10/04/2021

ATTEST

Karen Willner
By: Karen Willner
Title: Assistant to General Manager
Date: 10-6-2021

Nickole North
By: Nickole North
Title: Clerk/Treasurer
Date: 10/04/2021