

NP2023-10

**PEND OREILLE COUNTY
NEWPORT, WASHINGTON**

RESOLUTION NO. 2023- 45

**RESOLUTION REGARDING APPROVAL OF AN INTERLOCAL AGREEMENT
BETWEEN PEND OREILLE COUNTY AND THE CITY OF NEWPORT, WASHINGTON
FOR SHARING MANPOWER AND EQUIPMENT**

WHEREAS, pursuant to Chapter 39.34 RCW, agencies may enter a cooperative Interlocal Agreement wherein each may provide mutual aid in the sharing of labor and equipment resources; and

WHEREAS, the Board of County Commissioners believes entering into this type of agreement with the City of Newport, Washington is in the interest of the public.


NOW, THEREFORE BE IT HEREBY RESOLVED, by the Board of County Commissioners of Pend Oreille County, Washington, that the Interlocal Agreement between Pend Oreille County and the City of Newport, Washington is hereby approved, and the Chair of the Board, or a majority of the Board is hereby authorized to execute it on behalf of Pend Oreille County.

ADOPTED this 9 day of May, 2023.


**BOARD OF COUNTY COMMISSIONERS
PEND OREILLE COUNTY, WASHINGTON**



Brian Smiley, Chair




Robert Rosencrantz, Vice-Chair



John Gentle, Member

ATTEST:


~~Crystal Zieske, Clerk of the Board~~
Alicia pereyda
Acting

R-2023-45
NP2023-10

Return Address:

Craig Jackson
Pend Oreille County Public Works
625 Fourth Street
Newport, WA 99156

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04 and is not to be relied upon for any other purpose and shall not affect the intent of the warranty contained in the document itself.

Document Title:	Interlocal Cooperative Agreement
Grantor(s):	Pend Oreille County, WA
Grantee(s):	City of Newport, WA
Legal Description:	N/A
Assessor's Tax Parcel ID:	N/A

Filed with the Auditor or listed by subject on each Agency's web site pursuant to RCW 39.34.040.

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN PEND OREILLE COUNTY AND CITY OF NEWPORT**

THIS AGREEMENT is made on the date of last execution below by and between the City of Newport and Pend Oreille County, Washington, for each agency's Public Works Department.

WHEREAS, Pend Oreille County is a political subdivision of the State of Washington and the City of Newport is a municipal corporation of the State of Washington (hereinafter collectively "the Agencies"); and

WHEREAS, pursuant to Chapter 39.34 RCW, the Agencies may enter into a cooperative Interlocal Agreement wherein each may provide mutual aid in the sharing of labor and equipment resources; and

WHEREAS, the Agencies have the authority to construct, maintain, and repair their county roads within their respective jurisdictions and from time-to-time require the use of expensive, specialized equipment, assistance, or technical knowledge; and

WHEREAS, the Agencies find this Agreement to be mutually advantageous and the most efficient method in terms of time and money for public works projects or emergencies.

WHEREAS, the Pend Oreille Board of County Commissioners and Newport City Council have each authorized the execution of this Agreement by action taken at a regular meeting; and

NOW, THEREFORE, in consideration of the mutual promises and covenants terms and conditions set forth herein, the Agencies agree to cooperate with each other as follows:

**Article 1
PURPOSE**

1.1 Purpose

The purpose of this Agreement is to set forth the terms and conditions under which the Agencies will provide equipment, labor, specialized or technical training, and materials to each other on a reimbursable basis, and when available, for road construction, maintenance, equipment operation, repairs and for facilities support. The Agency supplying equipment, labor, specialized or technical training, and materials is designated as the "Provider." The Agency requesting and/or using the equipment, labor, specialized or technical training, and materials is designated as the "User."

**Article 2
EQUIPMENT, LABOR, SPECIALIZED OR TECHNICAL
TRAINING, AND MATERIALS TO BE FURNISHED**

2.1 Equipment Furnished

Each Agency agrees to furnish equipment as may be requested by the other Agency, so long as such equipment is owned by the Provider and available for use, on the following terms and conditions:

A. Request for Rental.

The User shall provide reasonable notice to the Provider requesting equipment, including the proposed dates when the equipment shall be picked up and returned. Each request for equipment shall be in a writing submitted by the User's Administrator to the Provider's Administrator. Each request shall specify the requested equipment, labor and/or material, the location of the work, and other information relevant to the request. Upon receipt of a request, the Provider shall respond within five (5) business days. In cases of emergency or unforeseen circumstance necessitating prompt action, the request and approval may be done orally, but must be confirmed in writing within 72 hours after the oral request and approval.

B. Transportation of Equipment.

The User shall be responsible for all transportation of the equipment and shall pick up and return the equipment to the location where such equipment is stored by the Provider.

C. Equipment Care, Maintenance, and Security.

The User shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Provider.

D. Equipment Operators.

The User shall permit the equipment to be used only by properly trained and supervised operators. The Provider may require, in its sole discretion, that only the Provider's personnel operate certain equipment. In doing so, the Provider shall be deemed an independent contractor and Provider's employees shall not be deemed employees of the User. The Provider's employee shall perform under the general direction and control of the User but shall retain full control of the manner and means of using the equipment.

E. Pre-rental Inspection.

The Agencies shall jointly inspect furnished equipment at the time of the rental and shall note in writing of any defect or problem. It is the responsibility of the User to raise any objections to equipment condition at the time of the joint pre-rental inspection. The User's Administrator, or his or her designee, shall promptly provide the Provider with a written receipt for equipment received for rental, including any defects or problems identified during the joint pre-rental inspection. Email shall be considered a written receipt.

F. Equipment Furnished "As Is."

The User accepts all furnished equipment AS IS and waives any and all claims against the Provider resulting from the condition of the equipment; except if such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions.

G. Equipment Use.

The User shall operate or use any equipment provided pursuant to this Agreement for purposes in conformance with the manufacturer's design and intended use, and the specific uses or purpose of the equipment as intended by the Provider, unless otherwise agreed in writing by the Administrators. For example, a vactor truck used for stormwater facility maintenance may not be used for work on sanitary or industrial sewage lines or facilities. Nothing in this Agreement constitutes a waiver of the User's obligation for safe and legal equipment operation pursuant to regulatory and industry standards and best practices.

H. Post-rental Inspection.

Upon the User returning equipment, the User and Provider shall jointly inspect, identify, and document any change in the condition of the equipment which exceeds normal wear and tear. Disputed equipment damage or problems should be documented. The Provider's Administrator, or his or her designee, shall promptly provide the User with a written receipt for returned equipment. Email shall be considered a written receipt.

I. Equipment Damage.

The User shall be responsible for all physical and mechanical damages beyond normal wear and tear and losses to the equipment during use, storage and transportation of the Provider's equipment, unless such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions.

J. Equipment Return.

The User shall return the equipment on or before the proposed return date, unless the Provider agrees to extend use of the equipment: provided, that in the event an emergency shall arise requiring use of the equipment by the Provider, the User shall return the equipment as directed by the Provider.

2.2 Labor

Labor shall be provided, as available, upon the request of the User. The User shall be responsible for arranging any necessary transportation of personnel, and associated cost. User shall be responsible for all costs of the labor as described in Section 5.2 below. User shall coordinate and supervise the work to be performed, ensure the safety of all personnel working at a site, and provide a rest area with water and restroom for crews.

Any Provider employees designated to provide the services called for by this agreement remain the employees of the Provider, subject to its discipline, personnel policies, and performance standards.

2.3 Specialized or Technical Knowledge

The Agencies agree that equipment operation is enhanced when an operator experienced with a particular make or model of equipment can share specialized or technical knowledge, they have acquired with an operator new to the equipment. This is not intended as general training in equipment operation, but an opportunity to bridge the gap between general principles and the particularities or quirks of a specific item. An appropriate example of this intention is having Provider's road stripe crew train User's experienced road stripe crew in the operation or maintenance or repair of Provider's road striping equipment. In comparable circumstances, and at the sole discretion of the Provider, each Agency agrees to provide basic training in the use of equipment provided to the User, upon the User's request. The date and time of any training will be mutually agreed upon by both Agencies.

Any specialized or technical training provided hereunder is supplemental to general training in equipment operation. The Provider does not warrant that this specialized or technical training is complete, or that it should be relied on as best practice or industry standard. It is the sole responsibility of the User to properly train personnel in User's safety practices or any other information necessary to the work.

Provider shall not be liable for any harm to User resulting from information provided or omitted in this specialized or technical training. User shall indemnify Provider against any and all claims arising from specialized or technical training of personnel, pursuant to Article 6.

All costs arising from specialized or technical training shall be reimbursed by the User pursuant to Article 5. Reimbursable training expenses shall be agreed to by the Administrators prior to the training and may include, but are not limited to travel expenses, lodging, meals, per diem, transportation and/or fuel. It is the responsibility of the User to provide any equipment, tools, or materials that the Provider may reasonably request to aid in the training. With prior approval by both Agencies, costs associated with equipment, tools, or materials incurred by the Provider for the training shall be reimbursed by the User.

2.4 Engineering

The County Public Works Department Engineering Staff may be utilized to assist the City of Newport for Engineering Services for the design and construction of streets, sidewalks, and utilities upon written and agreed upon scope and fee for services.

2.5 Independent Contractor

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

2.6 Requests for Work

- A. The Provider shall not be responsible for assuring that a request for work complies with bidding laws, and other Federal, State and local regulations governing the performance of such work. The Provider assumes that any request for work by the User is lawful and assumes no liability should there be irregularities in the request for work.
- B. There is no guarantee by the Provider that the work will meet the satisfactions of the User, nor that unsatisfactory work will be repaired without additional compensation to the Provider. The Provider charges no profit to cover guarantees and does not have total control over traffic, soil, weather, and other factors that might affect the work.
- C. Both Agencies, in their performance of the work under this Agreement shall abide by the provisions of RCW 35.77.020, .030, and .040.

Article 3 ADMINISTRATION

3.1 Administrators

The Agencies each designate one Administrator responsible for the administration of this Agreement. The contact information for each Administrator is as follows:

For the City of Newport:

City Administrator
200 Washington Ave S
Newport WA 99156
(509) 447-6496

For Pend Oreille County:

County Engineer
Pend Oreille County Public Works
625 W 4th St.
Newport, WA 99156
(509) 447-4513

The Administrators shall have full powers to act on behalf of his or her respective Agency for the purposes authorized in this Agreement.

Article 4 DURATION AND TERMINATION OF AGREEMENT

4.1 Duration

This Agreement shall be effective only upon execution by the Agencies; and (1) filing with the County Auditor, or (2) list by subject on each Agency's website or other electronically retrievable public source pursuant to RCW 39.34.040. This Agreement shall continue until December 31, 2025, unless terminated as set forth in Section 4.2. The duration of this Agreement may be extended for an additional two (2) year term by mutual written agreement of the parties as provided in Section 9.2.

4.2 Termination

This Agreement shall continue until terminated by either Agency by providing thirty (30) days prior written notice of termination to the other Agency. If this Agreement is so terminated, the Agencies shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Article 5 REIMBURSEMENT TO PROVIDER

5.1 Equipment

The User shall reimburse the Provider for furnished equipment based on the Provider's published equipment rental rate. The fuel tanks of furnished equipment shall be full when furnished and shall be full when returned by the User. If the equipment fuel tanks are not

full when the equipment is returned, the User shall pay for fuel usage based upon the Provider's then current fuel price per gallon.

5.2 Labor

The User shall reimburse the Provider for the actual cost of all labor of personnel provided to the User. Payment shall be made according to the published Cost Sheet.

The use of Labor under the terms of this Agreement is not intended to establish an employee-employer relationship, except as to the extent permitted by law. The Agencies agree the employing agency may be considered an "employer" under Title 51 RCW for purposes of worker's compensation claims.

5.3 Administrative Services Fee

In addition to equipment rental rates, labor reimbursement and fuel charges, the User shall pay the Provider an amount equal to ten percent (10%) of such charges as reimbursement of direct and indirect administrative, accounting and clerical services.

5.4 Payment

The Provider shall provide the User with a certified statement of all equipment rental, labor, fuel charges and administrative services fees within ten (10) days after return of equipment. The User shall pay the amount due to the Provider within thirty (30) days.

Article 6 INDEMNITY

6.1 Claims

The User shall indemnify, defend and hold harmless the Provider, its departments, elected and appointed officials, employees, and agents, from and against any and all claims, damages, losses and expenses for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, resulting from the User's use, storage and transportation of the equipment furnished by the Provider, unless caused by the sole negligence of the Provider, its departments, elected and appointed officials, employees, and/or agents. This indemnification obligation of the User shall not be limited in any way by the application of any worker's compensation acts, disability benefit acts or other employee benefit acts and the User expressly waives the protection afforded by such laws.

In the event of any and all claims, damages, losses and expenses for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, resulting from the concurrent negligence of the User and Provider, the Agencies shall be liable to the extent of their respective proportionate negligence.

The foregoing indemnification obligations of the User are a material inducement to the Agencies to enter into this Agreement and have been mutually negotiated.

The Agencies specifically acknowledge and agree to the terms of indemnification herein, and said acknowledgement and agreement is witnessed by the executing signatures of their authorized representatives found at the end of this Agreement.

Article 7 PERFORMANCE OF AGREEMENT

7.1 Compliance with All Laws

Each Agency shall comply with all federal, state, and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

7.2 Maintenance and Audit of Records

Each Agency shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by either Agency, and the Washington State Auditor's Office. Each Agency shall retain all such books, records, documents and other materials for six (6) years following the termination of this Agreement.

7.3 On-Site Inspections

Either Administrator or his or her designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances.

7.4 Improper Influence

Each Agency agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each Agency agrees, warrants and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

7.5 Conflict of Interest

The elected and appointed officials and employees of the Agency shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest or the appearance of a conflict of interest.

7.6 Nature of Cooperative Entity

This Agreement facilitates the cooperation of the Agency as independent bodies and shall not create a separate legal or administrative entity.

No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used or disposed of pursuant to this Agreement.

Article 8 DISPUTES

8.1 Waiver Limited

A waiver of any term or condition of this Agreement must be in writing and signed by the Agency. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence, or omission.

8.2 Dispute Resolution

In the event a dispute arises under this Agreement, the Administrators or their designees shall promptly meet in person in a good faith effort to negotiate resolution of the dispute. An attempt at such dispute resolution shall be a prerequisite to the filing of any litigation concerning the dispute. Refusal or failure of one Agency to participate in dispute resolution in good faith or at all shall constitute a waiver of this requirement.

8.3 Attorney's Fees

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each Agency shall pay its own attorney's fees and other costs incurred in that action.

8.4 Governing Law and Venue

This Agreement shall be governed exclusively by the laws of the State of Washington. Venue shall be in a court of competent jurisdiction for Pend Oreille County, State of Washington.

Article 9 GENERAL PROVISIONS

9.1 Assignment

Neither Agency may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means, unless otherwise agreed to by the Agencies in writing. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.2 Modification

This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the Agencies and adopted by resolution of each Agency's legislative authority.

9.3 Invalid Provisions

The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

9.4 Insurance

Each Agency shall carry for the duration of this agreement general liability, property damage and workers compensation insurance. It is understood by each of the Agencies hereto may fulfill these requirements through either self-insurance or the duly authorized insurance pool.

9.5 Entire Agreement

This Agreement constitutes the entire agreement between the Agencies. There are no understandings or agreements between the Agencies other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either Agency to enter into this Agreement.

9.6 Filing and State Approval

Pursuant to RCW 39.34.040, this Agreement shall be filed with the County Auditor of each Agency or listed by subject on each Agency's web site prior to its entry into force.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates below.

CITY OF NEWPORT WASHINGTON	BOARD OF COUNTY COMMISSIONERS PEND OREILLE COUNTY, WASHINGTON
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Fema Equipment Rates

Backhoe	\$52.69	
Brush Cutter	\$124.22	Needs Operator/Rate for Equip only
Broom	\$31.17	
Cracksel Machine	\$12.84	
Distributor	\$27.35	Needs Operator/Rate for Equip only
Grader	\$100.61	
Loader	\$78.13	
Paver	\$66.94	Needs Operator/Rate for Equip only
Roller Rubber	\$52.15	
Roller Steel	\$25.34	
Chip Spreader	\$121.45	Needs Operator/Rate for Equip only
Dump Truck	\$65.75	
Dump Truck	\$73.31	

Operator \$35.85 per Hour

City of Newport

2023 Equipment Rental Costs

Operator	\$38.38
Backhoe	\$52.69
Vac Truck	\$106.20
Street Sweeper	\$123.50
Loader	\$113.83
Dump truck/ Equipment Trailer	\$91.97
Motor Grader	\$100.61
Loader & Zipper	\$208.50
Super 104 Mower	\$20.28
Tandem Dump Truck	\$78.59
Bucket Truck	\$51.67
5yd Sand Truck	\$61.17
Saw Cutter	\$21.50

2024 Equipment Rental Cost

Operator	\$Actual Cost
Backhoe	\$52.69
Vac Truck	\$106.20 + Operator
Street Sweeper	\$123.50
Loader	\$113.83
Dump Truck/Equipment Trailer	\$91.97
Motor Grader	\$100.61
Loader & Zipper	\$208.50 + Loader Operator and Zipper Operator
Super 104 Mower	\$20.28
Tandem Dump	\$78.59
Bucket Truck	\$51.67
5 Yd Sand Truck	\$61.17
Saw Cutter	\$21.50
Compressor	\$28.25
Chip Spreader	\$121.75
Distributer Truck	\$61.17

* Approved by City Council 1/16/2024