

**AMENDMENT NO. 1  
TO  
AGREEMENT NP2015-10  
BULK COMMERCIAL WATER USE AGREEMENT**

This Amendment No. 1 to Bulk Commercial Water Use Agreement (“Amendment No. 1”) is made and entered into and made effective this 2<sup>nd</sup> day of August, 2021 by and between the West Bonner Water and Sewer District, a water and sewer district created pursuant to the laws of the State of Idaho (the “District”), and the City of Newport, Washington, a municipal corporation of the state of Washington (the “City”).

WHEREAS, the District and the City entered into that certain “Agreement NP2015-10, Bulk Commercial Water Use Agreement” effective as of May 15, 2015 (the “Agreement”), a copy of which is attached hereto as **Exhibit “A”** and by this reference incorporated herein; and

WHEREAS, the District and the City desire to amend Section VII(A) of the Agreement as provided in this Amendment No. 1.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

**Section 1. Amendment to Section VII(A) of Agreement.** Section VII(A) of the Agreement is hereby amended as follows (deleted language ~~stricken~~, added language double-underlined).

**VII. Payment Terms.**

A. Price. The City shall pay the District ~~\$1.07~~ \$1.20 per thousand gallons of water Delivered to the City (“Delivery Price”).

**Section 2. Other Terms and Conditions Unchanged.** Apart from the modifications and amendments set forth above, the Agreement shall remain unchanged and in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment No. 1, the terms of this Amendment No. 1 shall control.

**Section 3. Capitalized Terms.** All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

**Section 4. Counterparts.** This Amendment No. 1 may be executed in any number of counterparts, each of which, when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date and year set forth above.

**CITY OF NEWPORT**

**WEST BONNER WATER AND SEWER DISTRICT**

  
\_\_\_\_\_  
Shirley Sands, Mayor

\_\_\_\_\_  
By:  
Title: Chairman

ATTEST:  
  
\_\_\_\_\_  
Nickole North, City Clerk/Treasurer

ATTEST:  
\_\_\_\_\_  
By:  
Title: Clerk/Treasurer

**EXHIBIT "A"**

**Copy of Agreement**

## AGREEMENT NP2015-10

### BULK COMMERCIAL WATER USE AGREEMENT

THIS BULK COMMERCIAL WATER USE AGREEMENT ("Agreement"), is effective May 15, 2015, and entered into by and between the West Bonner Water and Sewer District, a water and sewer district created pursuant to the laws of the State of Idaho (the "District"), and the City of Newport, Washington, a municipal corporation of the state of Washington (the "City").

WHEREAS, the parties desire to enter into a contract for the sale and use of water on the terms and conditions set forth herein;

WHEREAS, the parties have had prior agreements and desire to terminate all prior agreements;

WHEREAS, in 1953 the District and the City jointly purchased a privately owned water system belonging to Citizens' Utility Company of Greenwich, Connecticut, and entered into a management agreement relating to the use and operation of the water system;

WHEREAS, subsequent to entering into that agreement, the parties determined that agreement was no longer adequate and entered into a subsequent agreement on April 17, 1975 that wholly superseded the 1953 agreement and segregated the ownership of the system components;

WHEREAS, technology, as well as the scope and size of the system and the service areas, have changed significantly over the years causing the prior agreement to be outdated; and

WHEREAS, it has been determined by the parties that none of the prior agreements adequately address the current status of the system and needs of the parties.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- I. **Termination of Prior Agreements.** Upon execution of this Agreement by both parties, all prior agreements entered into between the parties relating to the water system are terminated. The terms of this Agreement shall be the only agreement between the parties relating to the water system and delivery of water to the City.
- II. **Sale of Water.** The District shall sell to the City and the City shall purchase from the District water in the quantities and at the prices and upon the terms and conditions set forth in this Agreement.
- III. **Delivery.** The water shall be deemed delivered at the time it passes from the District's main transmission lines in Idaho through the City's water intertie located at 4<sup>th</sup> Street and Newport Avenue and enters into the City's main transmission lines in Washington ("Delivered").

**IV. Quantity Requirement.** The City will pump water from City wells and will purchase any additional water it requires from the District or any other supplier, with no monthly minimum requirement, and the District agrees that it will make a reasonable, good faith effort to meet and supply the City's requirements. Notwithstanding the foregoing, the District does not warrant or guaranty that the water rights held by the District are or will be sufficient to serve or meet all of the City's requirements.

**V. Purpose of Use.** The City agrees that the water delivered to and used by the City pursuant to this Agreement shall in all events be applied and used for lawful purposes consistent with all applicable laws, rules, and regulations, including those of the District, and of all federal, state, and municipal governmental authorities having jurisdiction.

**VI. Maintenance.** The responsibility for maintenance of the system shall be as follows:

**A. District System.** The District shall be responsible for the physical performance of maintenance on the District's System, which is located wholly in Idaho. The cost of such maintenance, repairs, and any necessary upgrades or replacement parts shall be exclusively the duty of the District ("Maintenance Costs").

**B. City System.** The City shall be responsible for the maintenance, repairs, replacements, and any upgrades of the City's System, which is located wholly in Washington, and all costs associated therewith. The City shall have no responsibility for any maintenance, repairs, replacements or upgrades to the District's System.

**VII. Payment Terms.**

**A. Price.** The City shall pay the District \$1.07 per thousand gallons of water Delivered to the City ("Delivery Price").

**B. Payment Terms.** The City shall be invoiced on a monthly basis, and shall pay said invoice within thirty (30) days of receipt. The City shall be responsible for all payment regardless of when it receives payment from its own customers.

**C. Sales Tax.** Any sales taxes imposed on deliveries of water to the City pursuant to this Agreement, which the District is required to pay or collect ("Sales Taxes"), shall be paid or reimbursed by the City to the District in addition to the Delivery Price. If the City furnishes the District with a timely and valid resale or other exemption certificate, Sales Taxes will not be added to the Delivery Price.

**D. Price Re-evaluation.** The parties agree that the price set forth in Section "A" above is based upon the District's actual cost to produce the water. In the event the District can document that its actual cost to produce water has increased, the District agrees to give the City notice of any documented increased costs of production not later than September 30<sup>th</sup> of any given year and the parties agree to meet and discuss any documented increased costs of production as they may relate to increased costs to the City during the following renewal period.

E. No Responsibility for East Side Water System. The City will not be responsible for any costs or maintenance associated with the water system located on the East side of the Pend Oreille River and no costs associated with this system will be included in any Price Re-evaluation or rate proposal pursuant to Section D above.

VIII. **Availability of Water.** This Agreement recognizes that historically, landowners in the West Bonner Water and Sewer District and the City of Newport have used this water. The parties agree that based upon this historical usage, in the event of a water shortage or other emergency, they will meet and agree upon reasonable usage restrictions and other ways to ensure that both parties equitably share the available water. The City knows, understands, and agrees the nature of the District's business is such that it cannot be the guarantor of water, however, the District agrees to work with the City to ensure both parties receive the water they need.

IX. **Term.** This Agreement shall be effective May 15, 2015 and shall annually renew on the same date of the following year, unless otherwise terminated by either party with 120 days' written notice.

X. **Time is of Essence.** Time and the strict and faithful performance of each of the conditions of this Agreement are expressly made the essence of this Agreement. If the City defaults in the payment of the Delivery Price or Sales Taxes, or defaults in keeping any of the other terms of this Agreement, the District may terminate water service to the City until the fees and costs are paid.

XI. **Liability.** Each party shall have and assume liability for all of the acts of its personnel and the operation of its system as provided under this Agreement. Neither party indemnifies the other in any capacity. The District shall not be liable for any contamination of the water once it is delivered. The City shall take all reasonable efforts to prevent any such contamination.

XII. **No Joint Venture or Partnership.** The parties agree that nothing contained in this Agreement shall be construed as making the District and the City a joint venture or partners.

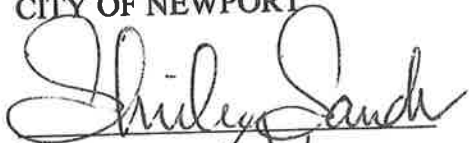
XIII. **Compliance with Law.** The parties agree to comply with all applicable federal and state law in the performance of their duties under this Agreement.

XIV. **Entire Agreement.** This is the entire agreement of the parties and can only be modified or amended in writing by both the parties.

XV. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

**XVI. Attorneys' Fees.** If action is brought to enforce the terms or provisions of this Agreement, each party will pay their own costs and attorney's fees.

CITY OF NEWPORT



Mayor

Dated: 5/04/15

ATTEST:



City Clerk

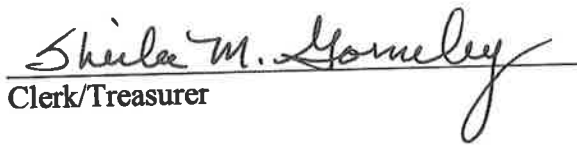
WEST BONNER WATER AND SEWER DISTRICT



Chairman

Dated: 5/13/15

ATTEST:



Clerk/Treasurer