

ORIGINAL

NP2012-07

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement, is made and entered into by and between the CITY OF NEWPORT, WASHINGTON, hereinafter called the "CITY," and WEST BONNER WATER AND SEWER DISTRICT, the successor to West Bonner Sewer District No. 1 of Bonner County, Idaho, hereinafter called the "DISTRICT."

WHEREAS, the CITY entered into an Agreement dated July 6, 1983 with the DISTRICT, a copy of which is appended hereto as Exhibit "A"; and

WHEREAS, the Agreement provides that it is for a period of thirty (30) years from the date of the agreement, but can be extended at the request of the DISTRICT for an additional twenty (20) years.

In consideration of the mutual promises and covenants contained herein, the parties hereby agree that the above-referenced Agreement is modified as follows:

- 1. Part Three, ~~Subdivision~~ <sup>Provisions</sup> Standards, Item I is amended to read as follows:

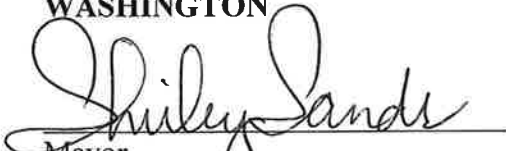
" This agreement shall expire July 6, 2033. Any extensions of time shall be for such period as shall be by mutual agreement of the parties."

- 2. This modification is effective as of the 6<sup>th</sup> day of August, 2012.


3. This modification incorporates and includes all of the changes agreed by and between the parties and supersedes and replaces any oral discussions, representations, or stipulations previously entered into by the parties.

4. All other provisions of the above-described contract shall remain in full force and effect and shall not in any way be modified, changed, altered, or amended by this contract modification.

CITY OF NEWPORT,  
WASHINGTON

  
\_\_\_\_\_  
Mayor  
Date: 8/6/12

WEST BONNER WATER AND SEWER  
DISTRICT

  
\_\_\_\_\_  
Lonnie Orr, Chairman  
Date: 7/19/12

ATTEST:

  
\_\_\_\_\_  
City Clerk

ATTEST:

  
\_\_\_\_\_  
Sheila Gormley, Board Clerk/Treasurer

V  
N

Exhibit A - 181312

*City*

ORIGINAL

AGREEMENT

1 THIS AGREEMENT, made and entered into this 27<sup>th</sup> day of  
2 Sept., 1983, by and between the CITY OF NEWPORT, Wash-  
3 ington, hereinafter referred to as the "CITY", and the WEST BONNER  
4 SEWER DISTRICT NO. 1 of Bonner County, Idaho, hereinafter referred  
5 to as the "DISTRICT".

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VSS P415-426  
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BONNER COUNTY  
PENNINGTON  
COUNTY AUDITOR

6  
7 WITNESSETH:

8  
9 WHEREAS, the City is the owner of a Sewage Treatment Plant  
10 operated for the benefit of its residents; and

11  
12 WHEREAS, the City and District have had an agreement that  
13 allows for the disposal of the District's sewage through the  
14 City's Sewage Treatment Plant; and

15  
16 WHEREAS, the City has installed a flow metering device at  
17 the junction of the City and District's systems, which said flow  
18 metering device has a remote reading and recording instrument lo-  
19 cated at the Sewage Treatment Plant and was installed to establish  
20 a percentage of flow between the City and District, which percen-  
21 tage of flow will determine the District's wholesale costs in  
22 relation to operation and maintenance of the Sewage Treatment  
23 Plant; and

24  
25 WHEREAS, the City intends to expand and improve the existing  
26 Sewage Treatment Plant; and

27  
28 WHEREAS, the City has enacted Ordinance 357 permitting the  
29 furnishing of sewerage service outside of the corporated limits of  
30 the City according to the provisions of said Ordinance; and

31  
32 WHEREAS, the State of Washington laws, RCW 39.34.030 author-  
33 izes municipalities to enter into inter-local agreements with  
34 other state agencies; and

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1 WHEREAS, the State of Idaho laws, I.C. § 67-2326 through  
2 67-2333 authorizes joint action by public agencies; and

3  
4 WHEREAS, the City and District have met from time to time  
5 and have determined that it is of mutual benefit to the health  
6 and welfare of the respective municipalities to enter into a re-  
7 negotiated agreement for the continuation of providing sewerage  
8 disposal services.

9  
10 NOW, THEREFORE, in consideration of the benefits to each  
11 party and in consideration of the mutual covenants herein con-  
12 tained, it is hereby agreed between the City and the District as  
13 follows:

14  
15 PART ONE

16 CUSTOMER RELATED O&M SERVICES

17  
18 ITEM I

19  
20 The purpose of this agreement is to provide continued sewer-  
21 age disposal service to the District and establish a method for  
22 the District to pay for said sewerage disposal service and provide  
23 for a method of calculation of the District's share of costs for  
24 the Phase II Sewage Treatment Plant expansion and improvements  
25 based on a percentage of flow ratio and growth factor, such share  
26 of costs hereinafter referred to as the "connection fee".

27  
28 ITEM II

29  
30 The City and District each own and maintain a "retail" sewage  
31 collection system within the limits of both municipalities. Each  
32 municipality shall maintain, operate and keep in good repair its  
33 own respective "retail" sewage collection system. The City agrees  
34 to take all necessary measures to collect delinquent fees from  
35 users who are physically located within the City limits, but who  
36 are connected to the District's sewage collection system. Such

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1 measures shall include any and all collection means which are  
2 authorized by law.

3  
4 ITEM III

5  
6 The City and District shall hold and save each other harmless  
7 of and from any liability of any kind or nature as to maintenance,  
8 repairs, upkeep or any other damages to their respective "retail"  
9 collection systems.

10  
11 ITEM IV

12  
13 The City and District will each enact and enforce such ordin-  
14 ances, resolutions and orders as are necessary to prevent system  
15 damaging contaminants and excess non-sanitary waters from being  
16 discharged into the collection system and to assure compliance  
17 with all other requirements either imposed by law for the opera-  
18 tion of public sewage collection and treatment facilities general-  
19 ly, or essential for prudent system operation.

20  
21 ITEM V

22  
23 The City shall maintain, operate and keep in good repair the  
24 City's Sewage Treatment Plant in compliance with all applicable  
25 local, state and federal laws and regulations.

26  
27 ITEM VI

28  
29 The City and District shall disallow any connections to their  
30 respective "retail" collection system which do not comply with the  
31 existing or future applicable regulations relating to the discharge  
32 of sewage into the City's Sewage Treatment Plant. The quality of  
33 the sewage discharge into the City's Sewage Treatment Plant shall  
34 not exceed the heavy metal and other chemical allowances required  
35 by the State of Washington, Department of Ecology (DOE), and  
36 Federal Environmental Protection Agency (EPA), without prior pre-

1 treatment or as provided for in the City's and the District's  
2 sewer use ordinance.

3 Both the City and the District agree to provide, by ordinance  
4 or resolution, for the enforcement of the terms and provisions of  
5 this paragraph, and to provide that a violation thereof shall  
6 subject the violating party to civil and criminal penalties which,  
7 in the opinion of the respective governing bodies of the City and  
8 the District, are adequate to protect the system. Said ordinance  
9 shall further provide for injunctive relief against the violating  
10 party and for the collection of costs and attorney's fees.

11  
12 ITEM VII

13  
14 At the District's written request, other sewerage related  
15 services may be rendered by the City. Actual costs for labor,  
16 materials furnished and equipment rental will be determined by a  
17 schedule of rates adopted by the City.

18  
19 ITEM VIII

20  
21 The City has installed a flow metering device at the junction  
22 of the City and District's systems, which said flow metering  
23 device has a remote reading and recording instrument located at  
24 the Sewage Treatment Plant and was installed to establish a sewage  
25 percentage of flow between the City and District. The City also  
26 maintains a similar flow metering device for all flow received at  
27 the Sewage Treatment Plant. The flow metering device, recorders,  
28 and sampling devices shall be maintained by the City and shall be  
29 accessible upon request by the District for verifying measurements,  
30 calibrations and percent of flow calculations. Maintenance and  
31 upkeep costs of the flow metering device and associated equipment  
32 will be an operation and maintenance (O&M) expense.

33  
34 ITEM IX

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36 The percentage of flow ratio will determine the District's

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1 share of actual operating and maintenance expenses of the City's  
 2 Sewage Treatment Plant for a budget year. A budget year will be  
 3 from January 1st through December 31st. The percentage of flow  
 4 ratio will be calculated from July 1st through June 30th. And  
 5 once the flow ratio has been established it will remain constant  
 6 thereafter, provided plus or minus of two percent tolerance will  
 7 be required before adjusting the previous years percentage of  
 8 flow ratio. Percentage adjustments will reflect proportionately  
 9 the District's share of actual O&M expenses.

10

11 The following formula will be used to calculate the percentage of  
 12 flow ratio:

$$13 \quad \frac{1}{12} \times \frac{a}{b} \times \begin{matrix} \text{budget estimate for} \\ \text{new fiscal year} \\ \text{O\&M costs} \end{matrix} = \begin{matrix} \text{estimated} \\ \text{WBSD No.1} \\ \text{monthly billing} \end{matrix} \times \begin{matrix} \text{estimated WBSD} \\ \text{No.1 yearly} \\ \text{billing} \end{matrix}$$

14  
 15 a = metered flow from District's collection system for a twelve  
 16 month period;

17 b = total metered flow through the Sewage Treatment Plant during  
 18 the same twelve month period.

19

20 The City will provide to the District no later than July 31st  
 21 of each year a projected O&M budget estimate for the forthcoming  
 22 budget year. The City will give to the District a copy of the  
 23 finalized Sewer O&M budget no later than January 31st of the new  
 24 budget year, which such O&M budget being annotated to reflect the  
 25 actual O&M line item expenses that will be billed monthly to the  
 26 District.

27

28 The City will submit to the District three (3) working days  
 29 after the first City Council meeting a billing for the District's  
 30 budgeted O&M expenses incurred during the previous month. The  
 31 District agrees to pay each bill within thirty (30) days of re-  
 32 ceipt.

33

34 It is mutually agreed that for the budget year 1983, the  
 35 District shall pay the City twenty-five percent of operation and  
 36 maintenance cost of the Sewage Treatment Plant.

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1 All questions concerning the District's bills shall be in  
2 writing and directed to the City's Administrative Assistant for  
3 processing. Questions not resolved to the District's satisfaction  
4 may be referred to the joint Sewer Committee by either party for  
5 resolution.

6  
7 The City will evaluate the Wastewater Treatment Plant's  
8 actual O&M expenditures at the end of a budget year, such evalua-  
9 tion will serve to make necessary adjustments to the District's  
10 paid O&M expenses for the previous budget year.

11  
12 O&M adjustments will be made in the following manner:

- 13 1. Amounts due the District will be reimbursed by:
- 14 a. reducing the amount of the District's estimated O&M  
15 expenses for the new budget year, or  
16 b. by payment of a "lump sum".
- 17 2. Amounts due the City will be reimbursed by:
- 18 a. increasing the amount of the District's estimated  
19 O&M expenses for the new budget year, or  
20 b. by payment of a "lump sum".

21 The choice of options is that of the municipality owing the debt  
22 for adjusted O&M expenses.

23  
24 Evaluation of the actual O&M expenses will be made after Jan-  
25 uary 21st and the District will be notified of the adjustment  
26 during the month of February.

27  
28 ITEM X

29  
30 The City maintains two (2) renewal, replacement and better-  
31 ment reserve accounts for the purpose of funding anticipated  
32 capital improvements and unforeseen capital expenditures. The  
33 reserve accounts are not to be used for routine O&M expenses of  
34 expansion. When actual costs are incurred and funds are expended  
35 from the reserve accounts, the City will bill the District and  
36 such billing will be based on the yearly percentage of flow ratio

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1 as outlined in ITEM IX (PART 1).

2

3

## ITEM XI

4

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The security for payment by the District to the City is as follows: (a) the District's "retail" charge to its users will be treated as an expense of operation and maintenance of the District's sewerage system; (b) the District will set its rates and charges sufficient to adequately maintain and operate its system, pay its charges to the City, pay its own debt service and provide for a reserve.

12

13

## ITEM XII

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For the purpose of settling any differences that may arise relating to the operation of any of the terms of this agreement, the City shall select two (2) members of its Council to represent the City, and the District shall select two (2) members of its governing board to represent the District, and such persons shall constitute a committee to consider such differences.

21

22

After a fair good faith hearing has been held by the committee, a majority vote of its members shall be the recommended settlement of the differences, and such recommendation shall be certified to the respective governing boards for their consideration and adoption.

27

28

The committee shall hold hearings upon seven (7) days notice, and only with all members in attendance. Failure of the members to attend such hearings, without good cause, shall be construed as a withdrawal of the alleged difference.

32

33

## ITEM XIII

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35

The City and District shall hold and save each other harmless of and from any liability of any kind or nature as to any loan

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1 debt service repayment required by either the City of District.

2  
3 PART TWO

4 PHASE II IMPROVEMENTS

5  
6 ITEM I

7  
8 The District agrees to pay to the City, a connection fee for  
9 the 1983 Phase II improvements to the Sewage Treatment Plant.

10 Said fee is to be considered as a capacity investment in thirty  
11 percent of the additional increment in treatment capacity result-  
12 ing from the Phase II improvements. As the daily average design  
13 flow of the increment of Phase II improvements is 220,000 gallons  
14 per day, the capacity of the District's connection fee shall be:

15  $220,000 \text{ GPD} \times 30\% = 66,000 \text{ gallon per day.}$  \*

16 \* capacity based on monthly average flow rate.

17  
18 The District agrees to pay as a connection fee, thirty per-  
19 cent of Phase II common project costs, conditioned as follows:

20 1. Common project costs will be considered those costs which  
21 benefit both the City and District, and which are integral  
22 to construction of said improvements (including bid price  
23 and any change orders). Costs which are not considered  
24 common project costs, and which shall be borne by the  
25 City and District independently, include but are not  
26 limited to:

27 a. legal fees for municipal bonding and loans, review of  
28 interagency agreements, or other non-construction  
29 legal assistance.

30 b. engineering fees for rate studies, ordinance and  
31 interagency agreement developement, assistance in  
32 grant or loan acquisition, or other non-construction  
33 legal assistance.

34 c. administrative costs which are not documented as  
35 construction project related or which are a routine  
36 function of City operation.

- 1 d. charges for interim interest on loans during the
- 2 construction period; provided that if the District
- 3 fails to make partial payments within forty-five (45)
- 4 days after receipt of request for payment, then the
- 5 District will be charged their proportionate share
- 6 of the accrued interim interest for the outstanding
- 7 amount until payment is made by the District.
- 8 2. The City assumes full responsibility regarding the pre-
- 9 preparation of progress payment estimates.
- 10 3. The District shall make monthly progress payments to the
- 11 City within forty-five (45) days after receipt of request
- 12 for payment. The billings from the City shall include
- 13 cost share calculations consistent with conditions of
- 14 the agreement.
- 15 4. The City shall exercise full control in all matters re-
- 16 lating to the Phase II Sewage Plant construction and
- 17 shall determine the amount of awarded contracts.
- 18 5. The District's estimated connection fee for Phase II
- 19 improvements is \$276,550.00 and will be proportionally
- 20 adjusted after awarding of bids, but shall not exceed
- 21 \$75,000.00 in District's cost and the State of Idaho
- 22 grant eligible participation.

23  
24 ITEM II

25  
26 The City and District mutually agree that twenty percent of  
27 the existing treatment capacity of 280,000 gallons per day is an  
28 equitable percentage allowable to the District for prior District's  
29 capacity investments.

30  
31 As provided for in ITEM I (PART TWO), the District's current  
32 connection fee for Phase II improvements is a capacity investment  
33 in thirty percent of the 220,000 gallons per day of increased  
34 treatment capacity, which totals a gross capacity of 500,000  
35 gallons per day. Therefore, it is agreed that the District's  
36 proportionate share of the Sewage Treatment Plant capacity, upon

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1 completion of Phase II improvements shall be:

2  $C_{wb} = 20\% \times 280,000 \text{ GPD} + 30\% \times 220,000 = 122,000 \text{ GPD}$  \*

3 \* the term "gallons per day" shall be based on a "monthly  
4 average flow rate". C<sub>wb</sub> means capacity of treatment for  
West Bonner Sewer District No. 1.

In no event shall it be construed, suggested or implied in any form, that the District shares in the ownership of the City's Wastewater Treatment Plant, irregardless of the District's participation in the costs for expansion, improvements or betterments of the Plant, whether it be in the past, present or in the future.

ITEM III

In the management of the Wastewater Treatment Plant, the City intends to fully utilize the maximum treatment capacity allowable prior to expanding the Plant after the Phase II improvements have been made, provided that unexpected growth would necessitate the expansion of the Plant prior to reaching maximum treatment capacity. However, the District's Treatment Plant capacity of 122,000 gallons per day shall be made available by the City to the District as needed.

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Whether it be the City, or the District, or both exceeding their respective current, allowable capacities (whereby the maximum treatment capacity is reached), that would necessitate the need to expand the plant. That expansion will be determined by the City, and such determination will be based on the terms and conditions of this agreement.

In the event that it shall become necessary for the City to up-grade the Wastewater Treatment Plant (i.e. to maintain the quality of effluent to meet changed regulatory standards), the District agrees that it will participate in the cost of the improvements.

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Capacity

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1 All costs related to up-grading, improvements or betterments  
2 of the Wastewater Treatment Plant, whereby the District partici-  
3 pates, will be negotiated on a ratio basis.

4  
5 If the City should expand treatment capacity and it is deter-  
6 mined under the terms of this agreement that the District is not  
7 required to participate, then the District would not be charged  
8 for additional O&M costs caused by expansion.

9  
10 PART THREE

11 STANDARD PROVISIONS

12  
13 ITEM I

14  
15 The life of this contract shall be for a period of thirty  
16 (30) years from date hereof. The City hereby grants to the Dis-  
17 trict the option to extend the life of this contract for an  
18 additional twenty (20) years from the expiration date of this  
19 agreement, by making written notice to the City one-hundred eighty  
20 (180) days prior to the date of expiration. Thereafter, any fur-  
21 ther extensions of time shall be for such periods as shall be  
22 agreed upon by the City and the District.

23  
24 ITEM II

25  
26 The agreement shall be in full force and effect from such  
27 date as each of the parties shall take the action required by law  
28 to validate the same.

29  
30 ITEM III

31  
32 This agreement, upon signing, supercedes all prior agreements  
33 between the City and District pertaining to the same subject  
34 matter.

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1 IN WITNESS WHEREOF, the parties to this agreement have  
2 executed the same by reason of the authorization separately  
3 obtained by each party as required by the laws governing their  
4 powers.

5  
6  
7  
8  
9 DATED AT NEWPORT, WASHINGTON, this 27<sup>th</sup> day of Sept, 1983

10  
11  
12  
13 James Olson  
14 Mayor  
City of Newport, Washington

15 ATTEST:  
16 SEAL  
17 Audrey Henderson  
18 City Clerk-Treasurer

19  
20  
21  
22  
23 ATTEST:  
24  
25 Earl L. Lenzi  
Chairman  
West Bonner Sewer District No. 1  
of Bonner County, Idaho

26  
27 Mona M. Keulen  
Secretary  
West Bonner Sewer District No. 1  
of Bonner County, Idaho

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