

**SECOND AMENDED COOPERATIVE ACTION AGREEMENT
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
AND THE TOWN OF CUSICK**

This Second Amended Cooperative Action Agreement (the "Second Amended Agreement") is made by and between the TOWN OF CUSICK, WASHINGTON (the "Town") and PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON (the "District"). The Town and the District 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 organized under Title 54 RCW.
- B. The Town is a town and municipal corporation organized under Title 35 RCW. The Town maintains and operates a water treatment plant ("Treatment Plant") and a distribution system in Cusick, Washington.
- C. The Town and the District as "Public Agencies" of the State of Washington authorized to exercise the authority granted by chapter 39.34 RCW (the Interlocal Cooperation Act).
- D. The District may enter into an Interlocal Agreement with the Town to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The Town's Certified Operator in Responsible Charge (as described in WAC 246-292-020 *et seq.*) resigned, leaving the Town in need of emergency assistance to operate the Treatment Plant.
- F. The District is willing to serve as the Town's Certified Operator in Responsible Charge while the Town attempts to find a more permanent solution to employ or contract with a qualified water operator for the Treatment Plant.
- G. On or about January 29, 2018, the Parties entered into a Cooperative Action Agreement for the District to provide emergency oversight of the Cusick Water System's treatment plant (the "Initial Agreement"). A copy of the Initial Agreement is attached as Appendix A to this Second Amended Agreement.
- H. On or about March 12, 2018, the Parties amended the Initial Agreement by entering into a First Amendment to Agreement ("First Amended Agreement"). A copy of the First Amended Agreement is attached as Appendix B to this Second Amended Agreement.
- I. The Parties desire to replace the terms of the Initial Agreement and First Amended Agreement, in their entirety, with the terms contained herein.

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:

AGREEMENT

- 1. Term. This Second Amended Agreement will become effective upon execution by both Parties and shall remain in effect until the earlier of: (a) June 30, 2019; (b) the date on which the Town hires or contracts with a Certified Operator in Responsible Charge to operate the Town's Treatment Plant; (c) the Parties mutually agree to terminate this Second Amended Agreement; (d) upon 10-days' notice of termination by either Party; or (e) a Party breaches this Second Amended Agreement and fails to cure such breach within a reasonable period of time following receipt of written notice of breach provided by the other Party. The date on which this Second Amended Agreement terminates shall be referred to herein as the "Termination Date."

2. District's Responsibilities. The District shall be designated as the Certified Operator in Responsible Charge of the Cusick Water Treatment Plant until the Termination Date. As Certified Operator in Responsible Charge, the District will make all reasonable and prudent decisions to operate the Treatment Plant according to acceptable public health practices and water industry standards, and shall have the following authority and responsibilities:
- a. Performing or managing the Treatment Plant's daily operational and maintenance activities according to acceptable public health practices and water industry standards;
 - b. Being available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day, and able to initiate appropriate action within two hours of contact. Appropriate action may include, but is not limited to:
 - i. Making necessary repairs or resolving problems; or
 - ii. Directing staff or contractors to make necessary repairs or resolve problems.
 - c. Conducting water quality monitoring, maintaining adequate records and taking follow-up action, if necessary, to comply with state and federal drinking water regulations;
 - d. Implementing preventive maintenance programs, inspecting treatment and other public water system components for malfunctions, maintaining adequate records, and making needed repairs;
 - e. Analyzing, reviewing, and maintaining records of instrument readings and laboratory test results, determining the location and causes of any malfunctions, adjusting various treatment processes or other components;
 - f. Implementing a cross-connection control program, if directed by the Town;
 - g. Determining and implementing remedial actions in an emergency and, if applicable, following departmental directives;
 - h. Cooperating during a special purpose investigation or sanitary survey as required in chapter 246-290 WAC;
 - i. Providing required records and reports to the Department of Health ("DOH") or its representative upon request; and
 - j. Providing written notification to the DOH within thirty days of:
 - i. Starting operations of a public water system; or
 - ii. Ending operations of a public water system.

The District will provide backup emergency response support to the Treatment Plant within 4 hours of being notified by the Town. The Town will notify the District's Water Systems Manager in the event of any irregular plant operation or failure, including but not limited to a filter failure or treatment deficiencies. The District shall not be required to do any work in the gas chlorinated room due to safety concerns.

The District, at the request of and payment by the Town, will review and provide project management recommendations of the design plans and specifications for, and provide assistance during construction of, the Town's Treatment Plant improvement project. This will primarily be performed by the District's Water Systems Manager at a rate of \$85.00 per hour.

The District's performance of its duties as Certified Operator in Responsible Charge does not relieve the Town of the responsibility to comply with the requirements of chapter 246-290 WAC. Moreover, the District shall not be deemed, nor shall the District have any responsibilities to act as, a Certified Operator in Responsible Charge of the Town's water distribution system.

3. **Compensation; Minimum Time.** The District will make available a certified water operator for a minimum of 16 hours per week, or as needed for onsite management. The Town shall pay the District \$3,952.00 per month as a minimum retainer payment (“Retainer Payment”). The Retainer Payment is intended to pay for up to 16 hours of operator labor per week, but shall be paid by the Town regardless of whether the District’s operator is needed for 16 hours per week. Costs in addition to the Retainer Payment shall be paid by the Town at the following rates:

Water Operator Labor (after first 16 hours each week)	\$57.00 per hour
Water Operator Labor – Overtime	\$90.00 per hour
Fleet Mileage Rate	\$0.58 per mile
Materials	At Cost
Water Systems Manager Labor	\$85.00 per hour

All calls to District employees after regular business hours are subject to overtime rates. The rates and costs identified above may be adjusted at any time by the District, subject to reasonable notice to the Town. The District will bill the Town on a monthly basis, and the Town will promptly remit payment in full.

4. **Scheduling and Meetings.** The Town’s water operator shall initiate daily phone contact with the District’s water operator (Monday through Friday, 7:00 a.m. to 3:00 p.m.) to discuss operations and maintenance. The Parties will hold regular meetings during the first week of every month to assist with daily calculations and monthly reports, which must be submitted to the DOH on or before the 10th day of each month. All such reports will be reviewed by the District’s Water Systems Manager prior to submittal.
5. **Indemnification.** The Town shall indemnify, defend, and hold harmless the District, its employees, officers, and agents from any and all liability, damages, and expenses, causes of action, claims and costs arising out of the District’s performance or nonperformance of this Second Amended Agreement, including the District’s operation of the Water Treatment Plant, except as may arise solely out of willful or grossly negligent acts of District employees, officers, and agents. In no event will the District’s cumulative liability arising from its performance or nonperformance of this Second Amended Agreement exceed the amounts paid to the District by the Town.
6. **Relationship of the Parties; Non-Disparagement.** The Parties agree that the Town does not represent the District and has no authority to obligate the District for any payment or benefit of any kind to any person. The Town also agrees that it and its agents, officers, directors, and employees will not disparage the District or its agents, officers, directors, or employees.
7. **Entire Agreement.** This Second Amended Agreement constitutes the sole and entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements between them, whether oral or written, including the Initial Agreement and First Amended Agreement attached as Appendices A and B to this Second Amended Agreement for reference purposes only. This Second Amended Agreement may not be modified or amended, nor may any term or provision hereof be waived or discharged, except in writing which is signed by the Party or Parties against whom such amendment, modification, waiver or discharge is sought to be enforced.

8. Compliance with Applicable Laws. The Town shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state, tribal, and local governments.
9. Severability. In the event any provision of this Second Amended Agreement is held to be invalid and unenforceable by a court of competent jurisdiction, the remaining provisions shall be valid and binding upon the Parties.
10. No Waiver. No waiver under this Second Amended Agreement is effective unless it is in writing, identified as a waiver to this Second Amended Agreement, and signed by the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Second Amended Agreement shall not constitute a waiver or estoppel of such right, remedy, power, or privilege.
11. Persons Bound and Assignments. The terms of this Second Amended Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors, subrogees, assigns, agents, employees, shareholders, officers, directors, parent, subsidiaries, affiliates, partners, heirs and associates. The Town's shall not assign, delegate, or otherwise transfer its obligations under this Second Amended Agreement without the written consent of the District, which consent may be withheld for any reason whatsoever. Any attempted assignment without the consent of the District shall be null and void and of no effect.
12. Dispute Resolution. In the event of any dispute between the Parties arising from this Second Amended Agreement, the terms of this Second Amended Agreement shall control. This Second Amended Agreement shall be interpreted and enforced according to the laws of the State of Washington.

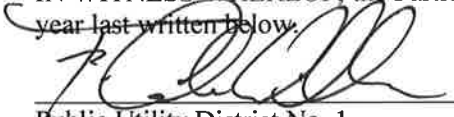
All disputes, claims, and controversies between the Parties arising out of or related to this Second Amended Agreement, including, without limiting the generality of the foregoing, any claim of misrepresentation, breach, or non-performance, all of which are herein designated as "disputes," shall be resolved through arbitration by a single neutral arbitrator, in accordance with the Washington Uniform Arbitration Act (Chapter 7.04A RCW). A single neutral arbitrator shall be selected by mutual consent of the Parties. If such an arbitrator cannot be agreed upon, the procedure identified in RCW 7.04A.110 shall apply. Arbitration will occur in Pend Oreille County, Washington. In any arbitration between the Parties arising from this Second Amended Agreement, the prevailing Party shall 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 shall not have authority to award punitive damages.

13. Notifications. All notices to be given pursuant to this Second Amended Agreement shall be addressed as follows:

To District	To Town
Pend Oreille Public Utility District Attn: General Manager 130 N. Washington PO Box 190 Newport, WA 99156	Town of Cusick Attn: Mayor Chris Evers 111 First Ave PO Box 263 Cusick, Washington 99119

14. Calculation of Time. If any time period specified herein expires on a Saturday, Sunday, or legal holiday, such time period shall be automatically extended through the close of business on the next regular business day.
15. Headings. The headings of the sections of this Second Amended Agreement are inserted solely for the convenience of the Parties, and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.
16. Counterpart Signatures. The Parties may execute this Second Amended Agreement, and any modification to this Second Amended Agreement, in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both Parties.

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



 Public Utility District No. 1
 of Pend Oreille County

 Town of Cusick


By: F. Colin Willenbrock
 Title: General Manager
 Date: January 15, 2019

By: _____
 Title: _____
 Date: _____

14. Calculation of Time. If any time period specified herein expires on a Saturday, Sunday, or legal holiday, such time period shall be automatically extended through the close of business on the next regular business day.
15. Headings. The headings of the sections of this Second Amended Agreement are inserted solely for the convenience of the Parties, and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.
16. Counterpart Signatures. The Parties may execute this Second Amended Agreement, and any modification to this Second Amended Agreement, in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both Parties.

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

Public Utility District No. 1
of Pend Oreille County



Town of Cusick

By: _____
Title: _____
Date: _____

By: Chris Eurs
Title: Mayor
Date: 2/2/19

APPENDIX A

Cooperative Action Agreement Dated January 29, 2018

FEB 02 2018

Received By _____
OK to File _____

AGREEMENT FOR COOPERATIVE ACTION

This Agreement for Cooperative Action ("Agreement") made and entered into this 29th day of _____, 2018, by and between the Town of Cusick ("Town"), a town organized under the laws of the State of Washington and Public Utility District No. 1 of Pend Oreille County ("District"), a municipal corporation organized under the laws of the State of Washington.

Purpose

The Town has entered into an Agreement for Cooperative Action with the District, under which the District will provide emergency oversight of the Cusick Water System until _____, or until the Town hires or contracts a certified operator in responsible charge, but not later than January 31, 2019.

Witnesseth

WHEREAS, the Town maintains and operates a water treatment and distribution system ("System") in Cusick, Washington; and

WHEREAS, the Town's certified operator resigned and is need of emergency assistance to operate the system; and

WHEREAS, the Town will need to employ or contract one water operator, certified under the laws of the State of Washington to operate the System's water treatment plant as it presently exists or with expected modifications; and

WHEREAS, the Town sought a second execution of the 2016 contract that expired; and

WHEREAS, the District with no immediate knowledge of the water system, is willing to provide services and our expertise to help the Town; and

WHEREAS, the Town and the District are "Public Agencies" of the State of Washington authorized to exercise the authority granted by RCW 39.34.020—the Interlocal Cooperation Act (the Act); and

WHEREAS, the District may enter into Interlocal Agreements with the Town to carry out its municipal purposes pursuant to RCW 54.16.090; and

WHEREAS, the Town and the District have determined that it is in their mutual best interests to develop an agreement.

NOW, THEREFORE, the Town and the District acknowledge and agree to the following:

1. The District will assist the Town in the operation of its water treatment plant. The District will provide a certified water operator for a minimum of 16 hours per week, or as needed for onsite oversight.
2. Daily phone contact will be initiated by the Town's water operator to the District's water operator (Monday – Friday, 7:00 a.m. to 3:00 p.m.) to discuss operations & maintenance.

3. The District will provide backup emergency response support within 4 hours of being notified by the Town. The Town will notify the District's Water Systems Manager, in the event of any irregular plant operation or failure; including but not limited to, a filter failure, chlorine loss, power failure, chlorine treatment deficiencies, etc.
4. The parties will hold regular meetings during the first week of every month to assist with daily calculations and monthly reports, which must be submitted to the Washington State Department of Health on or before the 10th of each month. All such reports will be reviewed by the District's Water Systems Manager prior to submittal.
5. This Agreement does not cover District work in the gas chlorinated room due to safety concerns.
6. The District in making the aforementioned commitments is in no way agreeing to be liable as the "Certified Operator in Responsible Charge" as outlined in WAC 246-292-032. In no event shall the District be liable or responsible for the System. The Town will indemnify the District for any damages that may result in the appropriate operation of the system.
7. It is understood that the Town does not represent the District and has no authority to obligate the District for any payment or benefit of any kind to any person. The Town agrees as part of this relationship to not disparage the PUD, its officers or employees.
8. Compensation will be made by the Town to the District in a retainer amount totaling a minimum \$47,424/year. Invoices will be sent by the District to the Town on a monthly basis totaling a minimum \$3,952/month plus all travel (at the fleet mileage rate), overtime hours and materials needed at cost purchased at the discretion of the District. The Town is subject to overtime hours and after hour rates over and above the retainer amount. In effect at the time of service. Compensation rates may be adjusted annually. All calls to District employees after hours are subject to overtime rates (See Compensation rates below).
9. Each party to this Agreement shall be responsible for damages to person or property resulting from the negligence on the part of its employees or officers, provided that nothing herein shall be construed to alter the Town's or the District's responsibilities under state law.
10. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action of law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in a court of competent jurisdiction in Pend Oreille County, Washington.
11. The "Agreement" will expire on January 31, 2019. If _____ becomes certified as a Water Treatment Plant Operator 2 for the Town prior to that date, the "Agreement" will have been completed. If the Town is still in need of the District's assistance after expiration, the District does have the option to extend the expiration date to needs they deem necessary.
12. Either party may terminate this Agreement in whole or in part, by providing a 10-day notice to the other party of termination. Any work performed after the date of the written notice but prior to the effective date of the termination shall be paid, as would any other work performed

under the terms of this Agreement. After the effective date of termination, no charges incurred under any terminated portions of the Agreement are allowable, other than charges required by the terms of contracts entered into prior to termination date.


The parties agree that this Agreement is the complete expression of the terms hereto, and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2018.

PUBLIC UTILITY DISTRICT NO. 1
OF PEND OREILLE COUNTY

THE TOWN OF CUSICK


Mark Scott ~~Water Systems Manager~~ *MARK SCOTT*
DIRECTOR



Attest:

REGULATORY AFFAIRS

Attest:

Approximate Reimbursement 2018-2019:
Waterman Hourly \$57
Waterman Overtime \$90
Fleet Mileage Rate \$0.0545
Materials at Cost

APPENDIX B

First Amendment to Agreement Dated March 12, 2018

COOPERATIVE ACTION AGREEMENT
BETWEEN
PUBLIC UTILITY DISTRICT NO. 1
OF PEND OREILLE COUNTY
AND
THE TOWN OF CUSICK

This First Amendment to Agreement is entered into by and between Public Utility District No. 1 of Pend Oreille County, hereinafter referred to as "District", and the Town of Cusick, hereinafter referred to as the "Town".

RECITALS

WHEREAS the District and Consultant entered into a Cooperative Action Agreement to provide emergency oversight of the Cusick Water System. A copy of said Agreement is attached as Exhibit 1 to this First Amendment to the Agreement; and

WHEREAS the District desires the term of the Agreement to be extended.

NOW, THEREFORE, said Agreement is amended as follows:

The term of the Agreement will be revised as follows:

- The District will be designated as the Certified Operator in Responsible Charge of the Cusick Water Treatment Plant, until the Town hires or contracts a certified operator in responsible charge, but not later than January 31, 2019.
- As certified operator in responsible charge, the District will make all reasonable and prudent decisions to operate the Town of Cusick Water System according to acceptable public health practices and water industry standards.
- The Town shall indemnify, defend and hold harmless the District, its employees, officers, and agents from any and all liability, damages, and expenses, causes of action, claims and costs arising out of the operation of the Water Treatment Plant, except as may arise solely out of willful or grossly negligent acts of District employees, officers, and agents.
- A certified operator designated by the Town to be in responsible charge of the Water Treatment Plant as required in WAC 246-292-020 shall perform or manage the public water system's daily operational and maintenance activities in this chapter, chapter 246-290 WAC, and according to acceptable public health practices and water industry standards.
- A certified operator in responsible charge or designee must be available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day, and able to initiate appropriate action within two hours of contact. Appropriate action may include, but is not limited to:
 - (a) Making necessary repairs or resolving problems; or
 - (b) Directing staff or contractors to make necessary repairs or resolve problems.

- (3) The duties of a certified operator in responsible charge or designee include, but are not limited to:
 - (a) Conducting water quality monitoring, maintaining adequate records and taking follow-up action, if necessary, to comply with state and federal drinking water regulations;
 - (b) Implementing preventive maintenance programs, inspecting treatment and other public water system components for malfunctions, maintaining adequate records, and making needed repairs;
 - (c) Analyzing, reviewing, and maintaining records of instrument readings and laboratory test results, determining the location and causes of any malfunctions, adjusting various treatment processes or other components;
 - (d) Implementing a cross-connection control program, if directed by the Town;
 - (e) Determining and implementing remedial actions in an emergency and, if applicable, following departmental directives;
 - (f) Cooperating during a special purpose investigation or sanitary survey as required in chapter 246-290 WAC;
 - (g) Providing required records and reports to the department or its representative upon request; and
 - (h) Providing written notification to the department within thirty days of:
 - (i) Starting operations of a public water system; or
 - (j) Ending operations of a public water system.
 - (k) The duties of a certified operator in responsible charge required in this chapter do not relieve the Town of the responsibility to comply with the requirements of chapter 246-290 WAC.
- The District, at the request of and payment by the Town, will review and provide project management recommendations of the design plans and specifications; and provide assistance during construction of the water treatment facility improvement project. This will primarily be performed by Mark "Bubba" Scott. Approximate Hourly Reimbursement is \$85.

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

Public Utility District No. 1
Of Pend Oreille County

By: Mark Carley

Title: Div, Regulatory Affairs

Date: 3/12/18

Town of Cusick

By: 

Title: Mayor

Date: 3/12/18