

**INTERLOCAL AGREEMENT  
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY  
AND THE CITY OF SEATTLE, THROUGH ITS CITY LIGHT DEPARTMENT**

This Interlocal Agreement (“Agreement”) is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON (“Pend Oreille”), and THE CITY OF SEATTLE, THROUGH ITS CITY LIGHT DEPARTMENT (“Seattle”). Pend Oreille and Seattle are herein referred to each individually as a “Party” and collectively as the “Parties.”

**RECITALS**

- A. Pend Oreille is a public utility district and municipal corporation organized under Title 54 RCW.
- B. Seattle is a first-class home rule city organized under Title 35 RCW.
- C. Pend Oreille and Seattle are “Public Agencies” of the State of Washington authorized to exercise the authority granted by chapter 39.34 RCW.
- D. Pend Oreille may enter an Interlocal Agreement with Seattle to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. Seattle owns and operates the Boundary Hydroelectric Project (FERC Project No. 2144, or the “Boundary Project”) in Pend Oreille County, Washington.
- F. Seattle has experienced significant staffing shortages at the Boundary Project.
- G. Pend Oreille owns and operates the Box Canyon Hydroelectric Project (FERC Project No. 2042), among other facilities, which is proximate to the Boundary Project. Pend Oreille employs hydroelectric operators and other technicians and maintenance staff who are experienced working on and around hydroelectric facilities.
- H. Seattle has requested that Pend Oreille assist in operating the Boundary Project when needed by Seattle, and Pend Oreille is willing to do so when Pend Oreille’s personnel and resources are available.

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 Agreement will become effective upon execution by both Parties and shall remain in effect until the earlier of: (a) December 31, 2023; (b) the date on which the Parties mutually agree to terminate this Agreement; or (c) upon 10-days’ notice of termination by either Party.
- 2. Purpose of this Agreement. The Parties agree that the purpose of entering into this Agreement is to facilitate operational assistance of the Boundary Project by Pend Oreille and provide the terms and conditions for such assistance.

3. Requests for Assistance. At any time during the Term of this Agreement, Seattle may request that Pend Oreille provide operational or maintenance staffing for the Boundary Project. Each such request must specify:
  - a. The duration of the requested assistance;
  - b. The number and job classification(s) of Pend Oreille’s employees requested;
  - c. The type(s) of work requested to be performed;
  - d. Any particular equipment, materials, gear, or other items needed for the work; and
  - e. All other material information that Pend Oreille would need in order to determine whether and on what conditions Pend Oreille could perform the work.

Each request for assistance must be made by an Authorized Official of Seattle (as identified in the table below), or any other person designated in writing by an Authorized Official of Seattle as being one with authority to make such requests. Pend Oreille will not consider requests from persons not expressly authorized. Requests must be made to an Authorized Official of Pend Oreille (as identified in the table below), or any other person designated in writing by an Authorized Official of Pend Oreille as being one with authority to receive such requests. Whenever feasible, Seattle shall submit its request for assistance at least 10 days prior to the first date of requested assistance. Pend Oreille makes no representation or commitment as to the availability of its staff to provide assistance under this Agreement.

<b>Seattle Authorized Officials</b>	<b>Pend Oreille Authorized Officials</b>
Janet Hart Senior Operations Manager 509-446-3083 Janet.hart@seattle.gov	Bryant Kramer Director of Power Production (509) 447-6784 bkramer@popud.org
Mike Haynes Asst. General Manager 206-684-3618 Mike.haynes@seattle.gov	Colin Willenbrock General Manager (509) 447-6758 cwillenbrock@popud.org

4. Discretion of Pend Oreille’s Authorized Official. Execution of this Agreement does not create any duty to respond to a request for assistance. When Pend Oreille receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response, after consulting with affected staff. An Authorized Official’s decisions on the availability of resources shall be final.
5. Control and Supervision of Pend Oreille Personnel. When providing assistance to Seattle under this Agreement, Pend Oreille’s personnel shall be deemed to be under the control of Seattle for agency purposes. Notwithstanding the foregoing, at all times under this Agreement, Pend Oreille’s personnel shall be deemed employees solely of Pend Oreille, and Seattle shall have no disciplinary or other supervisory authority over Pend Oreille’s personnel. Seattle shall make Pend Oreille’s personnel aware of any policies or procedures applicable to Pend Oreille’s personnel while assisting Seattle. In the event Seattle believes Pend Oreille’s personnel may have violated Seattle’s policies or procedures, Seattle’s only remedies are to (i) request different personnel be assigned by Pend Oreille; or (ii) terminate this Agreement.
6. Seattle Responsible for Boundary Project. Pend Oreille’s provision of services under this Agreement does not relieve Seattle of any of its responsibilities as the owner and FERC licensee for the Boundary Project. While Seattle may identify this Agreement to FERC as a means by which Seattle will

temporarily operate the Boundary Project, Pend Oreille does not accept any responsibility for Seattle's compliance with its FERC license(s), dam safety regulations, or other applicable laws, regulations, ordinances, directives, policies, or procedures.

7. Compensation. Seattle shall pay Pend Oreille for all costs incurred by Pend Oreille due to its provision of services under this Agreement. Such costs shall include, but may not be limited to, all personnel, mileage, equipment, and materials, in accordance with the following:
  - a. Personnel – Seattle shall reimburse Pend Oreille for all personnel costs incurred for work performed under this Agreement. Pend Oreille's personnel costs shall include both wages and benefits, as may be revised from time to time in accordance with Pend Oreille's policies, benefit plans, and collective bargaining agreement. Pend Oreille shall keep accurate records of work performed by personnel under this Agreement. In addition to direct costs for personnel assisting Seattle under this Agreement, Seattle shall reimburse Pend Oreille for all increased labor costs incurred by Pend Oreille for its own operations due to Pend Oreille assisting Seattle. For example, if Pend Oreille provides a Power Supply Operator to Seattle for a week, and because that operator is not available to work at the Box Canyon Project Pend Oreille must pay double-time rates to another employee, Seattle shall compensate Pend Oreille for all increased labor costs incurred by Pend Oreille. The employee(s) who are assigned to Seattle shall be paid at the higher of the payrates for such position between Pend Oreille and Seattle. Any power supply operator assigned to Seattle shall be paid Seattle's Chief Operator rate and work under the same conditions outlined in the September 12, 2022 Memorandum of Agreement between Seattle and the IBEW.
  - b. Mileage – Seattle shall reimburse Pend Oreille for all mileage in accordance with the then-effective IRS rate. Pend Oreille's employees assigned to Seattle will be paid mileage from their home to the Boundary Project and back home.
  - c. Equipment – Seattle shall reimburse Pend Oreille for the use of equipment under this Agreement, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to Pend Oreille in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If Pend Oreille uses rates different from those in the FEMA Schedule of Equipment Rates, Pend Oreille must provide such rates orally or in writing to Seattle prior to supplying the equipment. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. If Pend Oreille must lease a piece of equipment while its equipment is being repaired, Seattle shall reimburse Pend Oreille for such rental costs.
  - d. Materials and Supplies – Seattle shall reimburse Pend Oreille in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Pend Oreille must not charge direct fees or rental charges to Seattle for other supplies and reusable items that are returned to Pend Oreille in a clean, damage-free condition. Reusable supplies that are returned to Pend Oreille with damage must be treated as expendable supplies for purposes of cost reimbursement.

8. Invoicing and Payment. Pend Oreille will invoice Seattle on a monthly basis, and Seattle will remit payment in full no later than 60 days from the date printed on the invoice. All payments shall be made in U.S. dollars by ACH or other electronic wire transfer.
9. Indemnity. To the fullest extent allowed by law, Seattle shall indemnify, defend, and hold harmless Pend Oreille, its employees, officers, and agents from any and all liability, damages, expenses, causes of action, claims, fees, fines, and costs (collectively "Claims") arising from or relating to Pend Oreille's performance or nonperformance of this Agreement. The scope of Seattle's duty to indemnify, defend, and hold harmless Pend Oreille under this section includes, but is not limited to, Claims arising from or relating to Pend Oreille's operation of the Boundary Project, negligent or wrongful use of equipment or supplies on loan to Seattle, or faulty workmanship or other acts or omissions by Pend Oreille or its personnel except to the extent such acts or omissions constitute gross negligence or willful or wanton misconduct. Seattle's duty to indemnify, defend, and hold harmless Pend Oreille under this section shall extend to Claims that are or could otherwise be made by Seattle, and to Claims that are or could otherwise be made by third parties. Notwithstanding the foregoing, in no event will Pend Oreille's cumulative liability arising from its performance or nonperformance of this Agreement exceed the amounts paid to Pend Oreille by Seattle under this Agreement.
10. Workers' Compensation. Pend Oreille is responsible for providing workers' compensation benefits and administering workers' compensation for its employees. Seattle is responsible for providing workers' compensation benefits and administering workers' compensation for its employees.
11. Insurance. Seattle shall maintain an insurance policy or maintain a self-insurance program that covers activities contemplated under this Agreement, and that includes Pend Oreille and its personnel as additional insureds. Seattle shall provide Pend Oreille a copy of such policy or other documentation sufficient to establish compliance with this section.
12. Relationship of the Parties. The Parties agree that Seattle does not represent Pend Oreille and has no authority to obligate Pend Oreille for any payment or benefit of any kind to any person.
13. Entire Agreement. This 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. This 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.
14. Compliance with Applicable Laws. Each Party shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state, tribal, and local governments relating to their respective performance under this Agreement.
15. Severability. In the event any provision of this 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.
16. No Waiver. No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this 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 Agreement shall not constitute a waiver or estoppel of such right, remedy, power, or privilege.

17. **Persons Bound and Assignments.** The terms of this Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors, subrogees, assigns (when authorized under this Agreement), agents, employees, officers, and affiliates. Neither Party may assign, delegate, or otherwise transfer its respective obligations under this Agreement without the written consent of the other Party, which consent may be withheld for any reason whatsoever. Any attempted assignment without the consent of the other Party shall be null and void and of no effect.
18. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties, and no other person or entity shall have any rights under this Agreement as a third-party beneficiary.
19. **Dispute Resolution.** In the event of any dispute between the Parties arising from this Agreement, the terms of this Agreement shall control. This 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 Agreement shall be brought solely in Pend Oreille County Superior Court. In any action arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.
20. **Notifications.** All written notices, demands, or requests required by this Agreement (except for requests for assistance, or responses thereto, under Section 3 of this Agreement) shall be considered effective: (i) the same day when sent by email with delivery confirmation; or (ii) two business days following the date sent by certified U.S. mail, postage prepaid, or by certified overnight delivery service. All written notices, demands, or requests under this section shall be directed to the attention of the appropriate person(s) identified below:

<b>To Pend Oreille</b>	<b>To Seattle</b>
Pend Oreille Public Utility District Attn: General Counsel P.O. Box 190 Newport, WA 99156  Via Email: notices@popud.org With Copy To: twhitney@popud.org	City of Seattle, City Light Department Attn: Legal Affairs Advisor 700 5 <sup>th</sup> Ave, Suite 1416 Seattle, WA 98124  Via Email: jeff.wolf@seattle.gov


21. **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.
22. **Headings.** The headings of the sections of this 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.
23. **Counterpart Signatures.** The Parties may execute this Agreement, and any modification to this Agreement, in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both Parties.

[Signature Page Follows]

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

  
F. Colin Willenbrock (Nov 1, 2022 18:40 PDT)

PUBLIC UTILITY DISTRICT NO. 1  
OF PEND OREILLE COUNTY

  
Michael Haynes (Nov 2, 2022 06:26 PDT)

CITY OF SEATTLE,  
CITY LIGHT DEPARTMENT

By: F. Colin Willenbrock

By: Mike Haynes

Title: General Manager

Title: Asst. General Manager

Date: 11/01/2022

Date: 11/02/2022