

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

This Seventh Amended Cooperative Action Agreement (the “Seventh 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”).
- H. On or about March 12, 2018, the Parties amended the Initial Agreement by entering into a First Amendment to Agreement (“First Amended Agreement”).
- I. On February 12, 2019, the Parties amended the First Amended Agreement by entering into a Second Amended Cooperative Action Agreement (“Second Amended Agreement”).
- J. On July 17, 2019, the Parties amended the Second Amended Agreement by entering into a Third Amended Cooperative Action Agreement (“Third Amended Agreement”).
- K. On March 31, 2020, the Parties amended the Third Amended Agreement by entering into a Fourth Amended Cooperative Action Agreement (“Fourth Amended Agreement”).
- L. On June 30, 2020, the Parties amended the Fourth Amended Agreement by entering into a Fifth Amended Cooperative Action Agreement (“Fifth Amended Agreement”).
- M. On December 29, 2020, the Parties amended the Fifth Amended Agreement by entering into a Sixth Amended Cooperative Action Agreement (“Sixth Amended Agreement”).
- N. The Parties desire to replace the terms of the Initial Agreement, First Amended Agreement, Second Amended Agreement, Third Amended Agreement, Fourth Amended Agreement, Fifth Amended Agreement, and Sixth 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 Seventh Amended Agreement will become effective upon execution by both Parties and shall remain in effect until the earlier of: (a) June 30, 2022; (b) the date on which the Town's water operator obtains a Water Treatment Plant Operator certification sufficient to independently operate the Treatment Plant; (c) the Parties mutually agree to terminate this Seventh Amended Agreement; (d) upon 10-days' notice of termination by either Party; or (e) a Party breaches this Seventh 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 Seventh Amended Agreement terminates shall be referred to herein as the "Termination Date."
2. Purpose of this Seventh Amended Agreement. The Parties agree that the purpose of entering into this Seventh Amended Agreement is to ensure the Town has a Certified Operator in Responsible Charge for its Treatment Plant while the Town actively recruits its own operator(s). The Town understands and acknowledges that the District is not pursuing acquisition of the Treatment Plant or any other part of its water system, and that the District has not in any way agreed to assume permanent responsibility or ownership of the Treatment Plant or any other part of its water system.

The Town agrees that it is imperative that it actively recruit its own certified water operator(s) sufficient to meet Department of Health regulations. The Town also acknowledges and agrees that the District's willingness to extend its prior arrangement and enter into this Seventh Amended Agreement is premised on the Town's active and good-faith efforts to hire its own certified operator(s). If the Town does not continue in these efforts, the District reserves the right to terminate this Agreement.

3. 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; the District is not responsible for the Town's water distribution system, and will not be designated as such with the Department of Health. 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 at the Treatment Plant; or
 - ii. Directing staff or contractors to make necessary repairs or resolve problems at the Treatment Plant.
 - c. Conducting water quality monitoring at the Treatment Plant, maintaining adequate records and taking follow-up action, if necessary, to comply with state and federal drinking water regulations;
 - d. Implementing preventive maintenance programs at the Treatment Plant, 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. Determining and implementing remedial actions in an emergency at the Treatment Plant and, if applicable, following departmental directives;
 - g. Cooperating during a special purpose investigation or sanitary survey as required in chapter 246-290 WAC;

- h. Providing required records and reports to the Department of Health (“DOH”) or its representative upon request; and
- i. 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 \$88.40 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.

The Town agrees that, for the duration of this Seventh Amended Agreement, none of its elected officials, employees, contractors, or agents will enter into, operate, or make any modifications to the Treatment Plant unless the District’s Water Systems Manager or other authorized agent gives prior written consent. The Town’s breach of this provision shall be a basis for immediate termination of this Seventh Amended Agreement.

4. 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 \$4,110.00 per month as a minimum retainer payment (“Retainer Payment”). The Retainer Payment is intended to pay for up to 16 hours of Water 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. Water Operator overtime, as well as time charged by the Water Systems Manager, will be billed against the Retainer Payment until the Retainer Payment is exhausted each month, after which such costs will be billed in addition to the Retainer Payment. Costs in addition to the Retainer Payment shall be paid by the Town at the following rates:

Water Operator Labor	\$59.28 per hour
Water Operator Labor – Overtime	\$93.60 per hour
Fleet Mileage Rate	\$0.575 per mile ¹
Materials	At Cost
Water Systems Manager	\$88.40 per hour

The District shall be entitled to charge for reasonable costs and time spent conducting its due diligence activities in accordance with the rates described above.

¹ Rate to be adjusted in accordance with then-applicable IRS mileage reimbursement amount.

All calls to District employees outside of 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. The Parties acknowledge that the Town has previously paid an advance deposit in the amount of one-month's Retainer Payment, which the District currently holds as payment security (the "Security Deposit"). Upon termination of this Seventh Amended Agreement, the District will credit any remaining balance of the Security Deposit back to the Town.

5. Scheduling and Meetings. All Town operational questions or concerns should be directed to the District's Water Systems Manager. Once the Town hires its own water operator, that 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.
6. 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 Seventh 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 Seventh Amended Agreement exceed the amounts paid to the District by the Town under this Seventh Amended Agreement.
7. 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.
8. Entire Agreement. This Seventh 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. This Seventh 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.
9. Compliance with Applicable Laws. The Town shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state, tribal, and local governments.
10. Severability. In the event any provision of this Seventh 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.
11. No Waiver. No waiver under this Seventh Amended Agreement is effective unless it is in writing, identified as a waiver to this Seventh 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 Seventh Amended Agreement shall not constitute a waiver or estoppel of such right, remedy, power, or privilege.

12. Persons Bound and Assignments. The terms of this Seventh 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 Seventh 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.

13. Dispute Resolution. In the event of any dispute between the Parties arising from this Seventh Amended Agreement, the terms of this Seventh Amended Agreement shall control. This Seventh 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 Seventh 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 Seventh 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.

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

To District	To Town
Pend Oreille Public Utility District Attn: General Manager P.O. Box 190 Newport, WA 99156	Town of Cusick Attn: Mayor Duane Schofield 111 First Ave P.O. Box 263 Cusick, Washington 99119

15. 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.

16. Headings. The headings of the sections of this Seventh 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.

17. Counterpart Signatures. The Parties may execute this Seventh Amended Agreement, and any modification to this Seventh 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 Seventh 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: _____
Title: _____
Date: _____

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

DocuSigned by:
F. Colin Willenbrock
Public Utility District No. 1
of Pend Oreille County

F. Colin Willenbrock
By: _____
Title: General Manager
Date: 6/30/2021

Duane Schofield
Town of Cusick

By: Duane Schofield
Title: Mayor of Cusick
Date: 6-22-21