

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
AND PEND OREILLE CONSERVATION DISTRICT FOR
COTTONWOOD ENHANCEMENT AND EROSION MITIGATION**

This Interlocal Cooperation Agreement (the "Agreement") is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON (the "District") and PEND OREILLE CONSERVATION DISTRICT ("POCD"). The District and POCD 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. POCD is a conservation district and municipal corporation organized under Chapter 89.08 RCW.
- C. POCD 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 POCD to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The Parties desire that POCD will participate in the District's cottonwood enhancement and erosion mitigation programs as identified in the District's Comprehensive Wildlife Management Plan ("CWMP") for FERC Project No. 2042 (Box Canyon Hydroelectric Project).

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, 2021; (b) the date on which the Parties mutually agree to terminate this Agreement; (c) upon 30-days' written notice of termination by either Party; or (d) a Party breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice of breach provided by the other Party. The parties may, by mutual acceptance and agreement in writing, extend this Agreement for additional one-year periods, not to exceed five (5) total years. The date on which this Agreement terminates shall be referred to herein as the "Termination Date."
2. General Purpose. The purpose of this Agreement is for POCD to participate in the District's cottonwood enhancement and erosion mitigation programs as identified in the District's Comprehensive Wildlife Management Plan ("CWMP") for FERC Project No. 2042 (Box Canyon Hydroelectric Project).
3. Scope of Work.
 - A. Cottonwood Landowner Assistance Measures ("Cottonwood Program"). POCD shall administer the District's Cottonwood Program as identified in the CWMP in accordance with the following terms:
 - a. Program Goal. The goal of the Cottonwood Program is to increase the extent of cottonwoods in suitable areas around the District's Box Canyon Hydroelectric

Project. The program will provide annual support in the form of planting materials and technical assistance to public, private, or tribal landowners and managers wishing to improve habitat conditions on their property. The Cottonwood Program will also contain a public education component addressing the existence of the program, the benefits of participation, the use of cottonwoods and other native plants in shoreline stabilization projects, and information on successful projects. The District will assist the POCD in identifying potential areas suitable for cottonwood establishment. Over the course of the program, POCD will track contact efforts, and the extent and success of landowner assistance measures.

- b. Program Requirements. POCD shall administer a small-grants program to assist private and other landowners in cottonwood planting and other riparian habitat enhancements. POCD shall also conduct public education efforts in Pend Oreille County on the causes of erosion, bank protection and stabilization techniques, and related issues. For grant projects, planting materials will primarily be rooted cottonwoods suitable for spring planting, but other native trees and shrubs may be made available as well. Grant recipients will be required to adhere to the following guidelines, as well as others that may be established by the Box Canyon Technical Committee:
- Cottonwoods will be planted in areas reasonable believed to be able to support them. The focus area will be the shoreline of the Pend Oreille River and adjacent areas within the Project reach.
 - Cottonwood planting will use the best existing practice.
 - Planting sites will be monitored for methods compliance and success.
- c. Funding Terms. The District will make available up to \$5,000 annually for the POCD for the program activities. POCD may use the funds toward a match to acquire additional funding from other agencies or utilities as long as the funds are used to enhance cottonwood recruitment and riparian habitat in the Box Canyon Reservoir and watershed. Funds cannot be used for standalone riparian habitat without cottonwoods being a part of the project. Funds can be used for cottonwood plantings (or other approved riparian habitat enhancements) that are part of an erosion project as identified in the Erosion Program below, but Cottonwood Program grant funds can only be used for the plantings portion of such project, and cannot be duplicative of funds received by a landowner under the Erosion Program.
- d. Administrative Costs. Administrative costs charged by POCD shall not exceed \$500 for each year under this Agreement.
- e. Reporting. POCD will submit an annual report to the District regarding the Cottonwood Program activities and funds dispersed by December 15 of each year. At a minimum the annual report will include: a description of public outreach measures taken that year, a brief summary of each successful applicant's project, location, linear feet of shoreline or acres treated, number and size of cottonwood planted (if not included in project description), amount of grant funds allocated, post implementation monitoring results (Three year survival rate), and whether or not the applicant also took advantage of the District's erosion control grant.

- B. Private Lands Shoreline Erosion Control Program ("Erosion Program"). POCD shall administer the District's Erosion Program as identified in the Erosion Control, Prevention, and Remediation Plan ("Erosion Plan") in accordance with the following terms:
- a. Program Goal. The goal of the Erosion Program is to promote erosion control projects on privately owned properties that are adjacent to the Box Canyon Reservoir. This program will be accomplished in accordance with the terms of the Erosion Plan, and includes both administration of a grant program and public outreach to private landowners about the program.
 - b. Program Requirements. POCD shall administer a small-grants program to assist private landowners with qualifying erosion control projects. POCD shall also conduct public education efforts in Pend Oreille County on the causes of erosion, bank protection and stabilization techniques, and related issues. Private landowners with Box Canyon Reservoir shorelines may make application to POCD for funding for a shoreline erosion control project by providing POCD with approved permits from the applicable regulatory authorities (e.g., WDFW, U.S. Army Corps of Engineers, Pend Oreille County). Applications received by POCD will be date stamped upon receipt. Applications received by POCD will be screened to ensure that only projects which meet certain minimum qualifying criteria are accepted for potential funding. Minimum qualifying criteria will be provided by the District, as adopted by the Erosion Control Project ID Team, and will include considerations such as use of appropriate physical and biological control features, likelihood that the design will effectively control erosion at the site, and that the project is proposed for an area having moderate to high rate of erosion per the District's current Shoreline Erosion Hazard and Occurrence Map. Projects may be accepted for sites with a low erosion rate pending completion of a need assessment by District personnel or erosion contractor. The District will conduct an annual boat survey in the fall to inspect each completed and eligible project. This survey will provide opportunity for inspection by all permitting agencies. Prior to this survey, the POCD will provide a list of qualified projects that are to be inspected during the survey. Upon completion of the fall inspection those projects found to be complete and having fulfilled all permit conditions will be funded in order of receipt of the application by POCD subject to the availability of funding per the District's contribution provisions below.
 - c. Funding Terms. For private lands, the District will contribute funding for shoreline erosion control projects for individual landowners who meet the qualification criteria. These contributions will be limited to erosion control features of projects, and cannot be used for unrelated or ancillary activities, such as the development of shoreline access features (e.g., staircases, walkways, etc.), dock construction, weed control, or other purposes. Contributions will be limited to a single project per landowner, and will be limited to a single amount not to exceed \$5,000 or the total cost of the project, whichever is less. The District will provide up to \$50,000 per year for qualifying grant applications.
 - d. Administrative Costs. Administrative costs charged by POCD shall not exceed \$5,000 each year under this Agreement.
 - e. Reporting. POCD will submit an annual report to the District regarding the Erosion Program activities and funds dispersed by December 15 of each year. At a minimum the annual report will include: a brief summary of each successful applicant's project,

location, linear feet of shoreline treated, amount of grant funds allocated, the rate of erosion per the District's current Shoreline Erosion Hazard and Occurrence Map, and whether or not the applicant also took advantage of the District's cottonwood grant.

4. Indemnification. POCD 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 this Agreement, except as may arise solely out of the willful or grossly negligent acts of District employees, officers, and agents.
5. Relationship of the Parties. The Parties agree that POCD does not represent the District and has no authority to obligate the District for any payment or benefit of any kind to any person.
6. 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. Without limiting the generality of the foregoing, this Agreement specifically supersedes the Interlocal Cooperation Agreement between the Parties made on or about November 9, 2017. 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.
7. Compliance with Applicable Laws. POCD shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state, tribal, and local governments.
8. 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.
9. 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.
10. 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, agents, employees, shareholders, officers, directors, parent, subsidiaries, affiliates, partners, heirs and associates. POCD shall not assign, delegate, or otherwise transfer its obligations under this 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.
11. 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, 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 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.

12. Notifications. All notices to be given pursuant to this Agreement shall be addressed as follows:

To District	To POCD
Pend Oreille Public Utility District Attn: General Counsel 130 N. Washington Ave. PO Box 190 Newport, WA 99156 By Email: notices@popud.org With copy to: twhitney@popud.org	Pend Oreille Conservation District Attn: District Manager 121 N. Washington Ave. PO Box 465 Newport, WA 99156 By Email: Alexcc@pocd.org

13. 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.
14. 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.
15. 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.

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

hereby signed by:

F. Colin Willenbrock

Public Utility District No. 1
of Pend Oreille County

Pend Oreille Conservation District

By: F. Colin Willenbrock

Title: General Manager

Date: 7/29/2021

By: [Signature]

Title: Chair

Date: 7/20/2021