

NP 2017-12

**INTERLOCAL AGREEMENT FOR
Exclusive Use and Occupation of Second Street**

This Interlocal Agreement is made and entered into this 11 day of April 2017, by and between the City of Newport ("City"), a city organized under the laws of the State of Washington and Public Utility District No. 1 of Pend Oreille County ("PUD"), a municipal corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, the PUD maintains its primary operations headquarters in Newport, Washington in between West Second and West Pine Streets, all due east of South Union Avenue (WA State Highway 2) (See Map attached hereto as Ex. A); and

WHEREAS, on or about June 23, 2016, after consulting with the City of Newport, the PUD purchased certain real property adjacent to its primary operations headquarters on the opposite side of the West Second Street abutment in order to facilitate the described consolidation of operations (See Map attached hereto as Ex. A); and

WHEREAS, on or about August 10, 2016 and September 21, 2016 respectively, the PUD executed cooperation agreements with Newport Towing LLC as Lessee/Tenant and the Port of Pend Oreille as the owner of adjacent lands in order to mitigate any apparent impacts associated with a proposed long-term closure of a section of West Second Street (See attached here to as Ex. B and C); and

WHEREAS, the City is the owner, operator and responsible party for West Second Street and said street is currently closed to all through traffic at the adjacent Port of Pend Oreille crossing and was generally only utilized on a limited basis by the PUD and Newport Towing, LLC for alternative access; and

WHEREAS, on or about November 20, 2016, the PUD as the sole abutting landowner on both sides of the section of West Second Street in question, petitioned the Newport City Council to permanently vacate said section knowing that the vacation would benefit the ongoing operations of the PUD and all potential impacts had been fully and finally mitigated; and

WHEREAS, on or about February 6, 2017, the PUD appeared before the Newport City Council for a hearing on the petition and the Council voted to reject the petition and pursue an interlocal agreement that would meet the mutual best interests of the PUD and the City; and

WHEREAS, the City and PUD have agreed to continue to coordinate and collaborate with regard to the provision of services for the benefit of the citizens and ratepayers of their respective jurisdictions; and

WHEREAS, chapter 39.34 RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other governmental entities on the basis of mutual advantage and thereby provide services and facilities in a manner

pursuant to forms of governmental organizations that will accord best geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City and PUD are “Public Agencies” of the State of Washington authorized to exercise the authority granted by RCW 39.34.020, and

WHEREAS, the PUD may enter into Interlocal Agreements with the City to carry out its municipal purposes pursuant to RCW 54.16.090, and

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

NOW, THEREFORE, the City and the PUD acknowledge and agree to the following:

AGREEMENT

1. GRANT OF EXCLUSIVE RIGHTS OF ACCESS, OCCUPATION AND USE. The City grants the PUD exclusive rights of access, occupation and use privileges to those portions of West Second Street as described in this agreement, and more particularly described in Ex. A (“the Premises”), for the purpose of enclosing and expanding its current operations facilities in Newport, Washington.

2. TERM OF AGREEMENT. This Agreement shall be for a period of thirty (30) years from April 1, 2017, through March 31, 2047, and shall automatically be extended for a second thirty (30) year term unless either party has given formal written notice of termination.

3. RIGHTS OF THE PUD. During the term of this Agreement, the PUD shall have the following rights. The PUD shall have the right to enclose/fence “the Premises” and to use the Premises to expand its current operations facilities in Newport, Washington. The PUD shall have the right of ingress and egress to and from the Premises and the right to control ingress and egress to and from the Premises.

Both parties understand and acknowledge that the City maintains several utility installations below the surface of “the Premises” including but not limited to water mains, sewer mains, storm water piping etc. From time to time, the City may require access to “the Premises” to maintain, repair or replace these utility installations. These maintenance/repair activities may require the City to gain access to these utilities by excavating various areas of “the Premises” which may temporarily impact PUD operations. Because of these utility installations, the PUD will not construct nor permit to be constructed any building or other structure on “the Premises”. In the event that the City finds it necessary to conduct excavation activities on “the Premises”, the City agrees to bring the excavated area back to useable condition as soon as reasonably possible, however, the City has no duty to repair or replace asphalt or other surfacing which may be disrupted due to the City’s excavation activities.

4. DUTIES OF THE PUD. The PUD shall have the following duties. The PUD shall provide written notice of its intent to construct/reconstruct on parcels **adjacent** to the Premises at least thirty (30) days prior to such if such construction/reconstruction would have a material impact on the future use of the Premises by the City. Such notice shall include information in sufficient detail to advise the City concerning the nature of the construction/reconstruction activities, the place of such activities, the particular facilities that will be installed, the schedule for such, and any anticipated use of the City’s

property that may materially interfere with future use. The PUD's use of the Premises shall not interfere with the existing status of a street except for purposes of improving the hard surface, drainage and the like. Such notice shall not be required in an emergency circumstance beyond the reasonable control of the PUD. In the event of an emergency, the PUD shall provide notice to the City, if required, at the earliest possible time. The PUD shall comply with all laws and regulations applicable to the PUD's activities under this Agreement.

5. RIGHTS OF THE CITY. The City shall have the following rights. The City shall be entitled to receive the notices required from the PUD in a timely manner. If there is any emergency which requires City access to the Premises when the PUD is interfering with such during construction/reconstruction or maintenance of the PUD's facilities, the City shall notify the PUD as quickly as possible and the PUD shall take all possible action to clear and open the Premises for such use. Otherwise, the City shall have access to the Premises only on an as needed basis with written notice at least (10) days prior. The City shall have the right to access and repair all underground utility infrastructure running through the Premises upon proper notice, minimal interference or interruption to the PUD's operations and a good faith commitment to explore all reasonable and prudent opportunities for relocation of said infrastructure at the time.

6. DUTIES OF THE CITY. The City shall have the following duties. The City shall maintain its facilities in a reasonable manner to avoid injury or other incidence that may cause damage to the PUD's personnel or facilities. When the PUD provides a thirty (30) day notice of its intent to construct/reconstruct or maintain its facilities, the City shall review the information and plan submitted by the PUD in a timely manner and shall notify the PUD, in a reasonable manner, of any potential interference that the PUD's plans may have with respect to the City's operations. If the City notifies the PUD of any interference with its operations, representatives of the City and the PUD shall confer and attempt in good faith to resolve any dispute with respect to such interference. The City shall comply with all laws and regulations applicable to the City's activities under this Agreement.

7. INDEMNIFICATION. The PUD shall indemnify and save harmless the City from all claims directly or indirectly arising out of the PUD's activities on or use of the Premises including, but not limited to, claims by the PUD's employees and/or contractors, save those arising out of the sole negligence of the employees or agents of the City. The PUD understands that by agreeing to hold the City harmless from claims by the PUD's employees, the PUD is waiving its immunity under RCW 51 *et al.* The City shall indemnify and save and hold the PUD harmless from all claims directly or indirectly arising out of the City's activities on the Premises.

8. TERMINATION BY THE CITY. If the PUD shall materially breach the conditions of this Agreement the City may deliver a written notice of the alleged breach to the PUD. The PUD shall take appropriate action to cure or correct the alleged breach. If the alleged breach will take more than thirty (30) days to cure or to correct, and if the PUD has not commenced appropriate action to cure or correct the alleged breach within thirty (30) days after the receipt of notice of the alleged breach, the City may terminate this Agreement. If the City shall give written notice of an alleged breach and if the PUD shall dispute such alleged breach, in good faith, the City shall not have a right to terminate this Agreement until such time as the dispute has been adjudicated, provided that the PUD shall commence an action against the City to adjudicate the dispute within thirty (30) days of the receipt of written notice of the alleged breach. After a dispute has been adjudicated, and a final decision has been rendered, the PUD shall have thirty (30) days from the date of the final decision to cure or correct the alleged breach.

9. TERMINATION BY THE PUD. The PUD may terminate this Agreement without cause and without liability by giving the City one (1) year's notice, in writing, of the intention to do so. No termination of this Agreement hereby granted shall release the PUD from any liability or obligation with respect to any matter occurring prior to such termination. Upon such termination, the PUD agrees to be responsible for and abide by any reasonable terms and condition the City may request for the purposes of restoration of the Premises for which the Agreement is granted or for purposes of insuring continued operation of the Premises. This provision shall not be construed to require the PUD to pay any monies except as may be required to restore that portion of the Premises affected by the PUD's activities.

10. INSURANCE: Throughout the term of this Agreement, the PUD at its sole cost and expense, shall keep in force, for the mutual benefit of the City and PUD, liability insurance against claims and liability for personal injury, death, or property damage directly or indirectly arising out of the PUD's activities on and/or use of the Premises with policy limits of at least \$5,000,000.00. The PUD shall cause the policy to be endorsed to include the City as an additional insured and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention trusts maintained or participated in by the Parties shall be excess and not contributory to insurance required. The PUD shall deliver to the City a copy of the endorsement required by this Agreement. The PUD shall include a provision in the insurance policy requiring the insurance carrier to provide the City at least thirty (30) days prior written notice before such policy terminates. The District shall not substantially modify the insurance policy required by this Agreement without at least thirty (30) day prior written notice to the City.

11. REMEDIATION OF PROPERTY. Upon termination without an extension of this Agreement, the PUD shall remove any/all of its facilities located on the Premises. In addition, the PUD shall be responsible for and abide by any reasonable terms and conditions the City may request for the purposes of restoration of the Premises for which the Agreement is granted or for purposes of insuring continued operation of the Premises. This provision shall not be construed to require the PUD to pay any monies except as may be required to restore that portion of the Premises affected by the PUD's activities.

12. BINDING EFFECT. The terms and provisions of the Agreement shall be binding upon, and the benefits shall accrue only to the parties or to governmental successors or assigns of the respective parties. The PUD shall not assign this Agreement or any interest therein to any non-governmental entity. No assignment of this agreement shall be effective without the written consent of the City, and the City agrees not to unreasonably withhold such consent, so long as the successor or assign is a governmental entity.

13. FILING OF THE AGREEMENT FOR RECORD. It is understood and agreed that the PUD and/or the City may file this Agreement with the Auditor of Pend Oreille County, Washington, for recording.

14. TIME IS OF THE ESSENCE. The parties agree that time is of the essence and that the parties will act in good faith to perform under the terms of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

PUBLIC UTILITY DISTRICT NO. 1

CITY OF NEWPORT

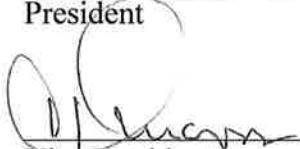
BOARD OF COMMISSIONERS



President




By: Shirley Sands, Mayor




Vice President



Secretary

ATTEST:


General Manager, PUD No. 1

ATTEST:


Nickole North, MMC, CPFA
City Clerk/Treasurer

Approved:

Telephonically Approved

Tom Metzger
City Attorney



Pend Oreille County Public Utility District

Administrative Offices – P.O. Box 190 • Newport, WA 99156 • (509) 447-3137 • FAX (509) 447-5824
Box Canyon Hydro Project – P.O. Box 547 • Ione, WA 99139 • (509) 446-3137 • FAX (509) 447-6790

August 10, 2016

John Jackson
Newport Towing LLC
P.O. Box 1942
Newport WA, 99156

RE: Gate Installation and Turn Around Access

Dear John,

Thank you for meeting with the District and the Port on August 9, 2016 to discuss potential alternative vehicle access points for Newport Towing, LLC.

By this letter, the District agrees to install at its expense a gate in your south fence to accommodate drive-thru access and move the existing pole and anchors in your lot as close as possible to the southwest corner of your business lot. The District further agrees to level and gravel at its expense the area to the south of your business to allow for vehicle traffic and radius turns entering and exiting your south gate. The District will also repair potholes and apply dust control on the access road to your business from Pine Street. In no event shall the total of said upgrades exceed \$10,000.00.

In return, Newport Towing, LLC agrees as the Lessee/Tenant in Interest of the relevant Port property to **relinquish all rights, claims of necessity, or similar interests** in the relevant portions of West 2nd Street, aside from reasonable utility easements.

It is mutually understood between the District and Newport Towing, LLC that all such upgrades to the property shall be contingent upon the Port and the City of Newport similarly agreeing to **relinquish all rights, claims of necessity, or similar interests** in the relevant portions of West 2nd Street, aside from reasonable utility easements.

Please feel free to contact me with any questions you might have concerning this letter.

Sincerely,

Chris Jones
Director of Operations and Engineering
Pend Oreille County PUD #1

Accepted and Agreed by:

John Jackson
Newport Towing LLC

Memorandum of Agreement

Between

Public Utility District No. 1 of Pend Oreille County

And Port of Pend Oreille

Parties

This Memorandum of Agreement (MOA) is entered into by and between Public Utility District No. 1 of Pend Oreille County (PUD) and Port of Pend Oreille d/b/a Pend Oreille Valley Railroad (PORT), collectively referred to as the "Parties".

Purpose, Objective and Scope

This MOA outlines the mutual agreement between the Parties to address the permanent closure of those portions of West Second Street in Newport, Washington, which may be critical to the respective operations adjacent thereto. The Parties agree that it is in their mutual best interest to work together in good faith to address perceived impacts associated with said closure and to support each other's respective interests in serving the public.

Recitals

WHEREAS, the PUD maintains its primary operations headquarters in Newport, Washington between West Second and West Pine Streets, all due east of South Union Avenue (WA State Highway 2) (See Map attached hereto as Ex. A); and

WHEREAS, the PUD also leased operations space for its Natural Resources and Community Network Departments north of West Pine Street and west of North State Avenue (ID State Highway 41); and

WHEREAS, on or about August 1, 2016, the PUD assigned its leasehold interest in the space near State Highway 41 to the Newport School District in order to facilitate a community technical education program and to consolidate its own operations and control associated operations costs; and

WHEREAS, on or about June 23, 2016; the PUD purchased certain real property adjacent to its primary operations headquarters on the opposite side of West Second Street abutment in order to facilitate the consolidation of its operations (See Map attached hereto as Ex. A); and

WHEREAS, the PORT owns and operates a rail road and switch yard and hosts an independent towing operation, Newport Towing, LLC, on lands adjacent to the eastern boundary line of the PUD's primary headquarters (See Map attached hereto as Ex. A); and

WHEREAS, on or about August 8, 2016, the PUD met with representatives from the PORT, Newport Towing, and the City of Newport to discuss the permanent closure of West Second Street from the line depicted in Ex. A connecting the respective PUD parcels to the junction with South Union Avenue; and

WHEREAS, on or about August 10, 2016, John Jackson of Newport Towing, LLC executed a letter agreement with the PUD agreeing to relinquish all rights, claims of necessity, or similar objections to the West Second Street closure in return for certain upgrades to his towing operations and alternative access routes (See Letter Agreement attached hereto as Ex. B); and

WHEREAS, the PUD and the PORT now desire to similarly document their collaborative agreement for the mitigation of any apparent impacts associated with the West Second Street closure.

NOW, THEREFORE, the Parties acknowledge and agree to the following:

1. The PORT shall relinquish all rights, claims of necessity, or similar interest in the relevant portion of West Second Street, aside from reasonable utility easements, if any, and provide general support without objection to the PUD's request for said closure;
2. The PUD shall in return provide and install a 20 foot wide rolling gate of appropriate specifications on the south end of the fenced area utilized by Newport Towing, LLC;
3. The PUD shall also move, at PUD's sole cost and expense, the pole and anchors near the Newport Towing, LLC operation so as to not interfere with the above referenced gate and ingress and egress associated therewith;
4. The PUD shall also provide, or contract for, the grading and leveling of the ground to the south of the Newport Towing, LLC mobile office sufficient for ingress and egress associated with the operations of Newport Towing, LLC and without impact to the adjacent operations of the PORT and its rail yard;
5. The PUD shall also provide reasonable support for any future grading or dust control from Pine Street to Newport Towing, LLC's site on an as needed basis.

This MOA is intended to have an indefinite term but shall terminate upon written consent by all Parties hereto.

SIGNATURES

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY

By  9-16-16

F. Colin Willenbrock, General Manager

Date

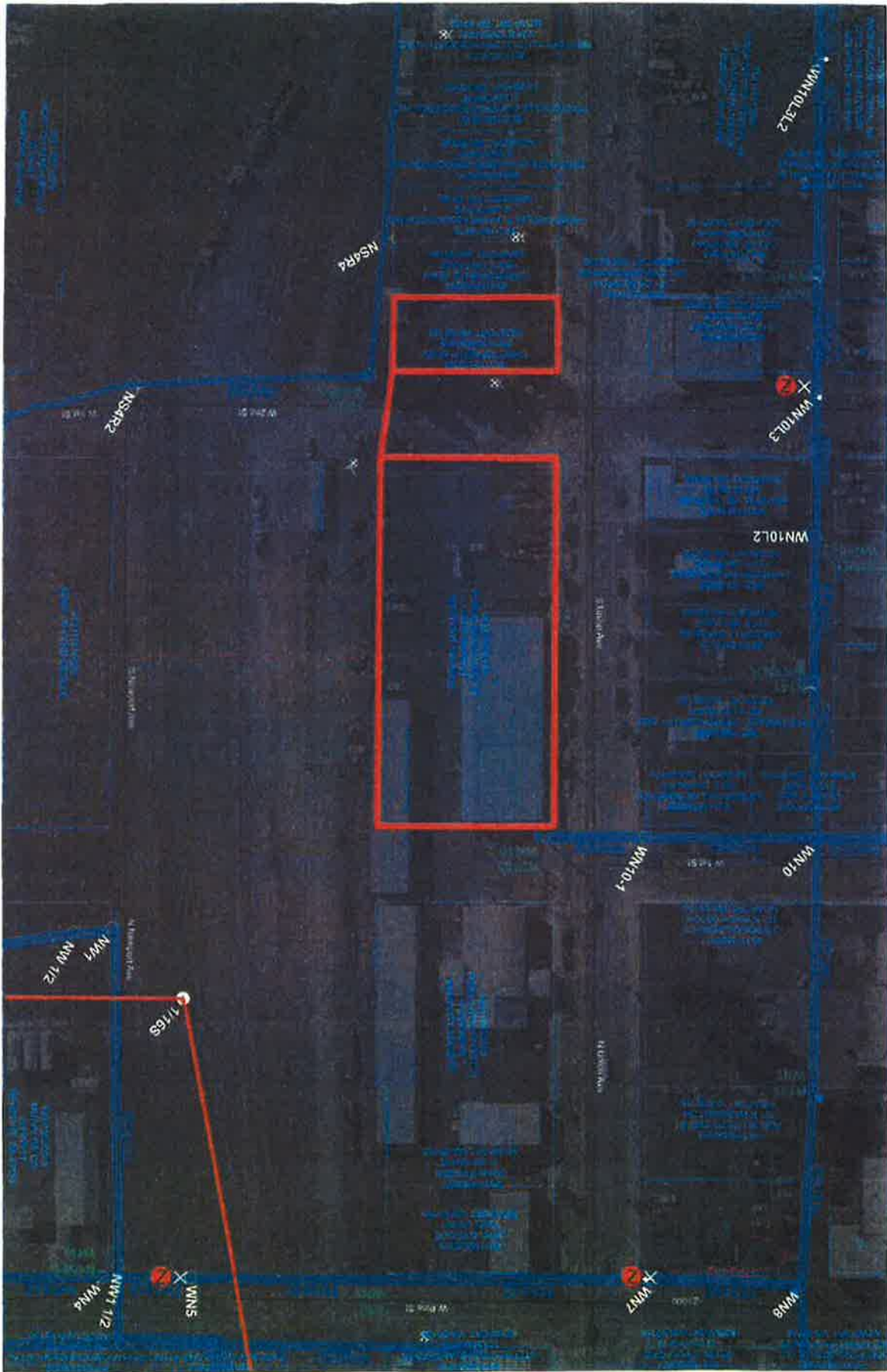
PORT OF PEND OREILLE

By  09-21-16

Kelly Driver, General Manager

Date





EX-B



Pend Oreille County Public Utility District

Administrative Offices – P.O. Box 190 • Newport, WA 99156 • (509) 447-3137 • FAX (509) 447-5824
Box Canyon Hydro Project – P.O. Box 547 • Lone, WA 99139 • (509) 446-3137 • FAX (509) 447-6790

August 10, 2016

John Jackson
Newport Towing LLC
P.O. Box 1942
Newport WA, 99156

RE: Gate Installation and Turn Around Access

Dear John,

Thank you for meeting with the District and the Port on August 9, 2016 to discuss potential alternative vehicle access points for Newport Towing, LLC.

By this letter, the District agrees to install at its expense a gate in your south fence to accommodate drive-thru access and move the existing pole and anchors in your lot as close as possible to the southwest corner of your business lot. The District further agrees to level and gravel at its expense the area to the south of your business to allow for vehicle traffic and radius turns entering and exiting your south gate. The District will also repair potholes and apply dust control on the access road to your business from Pine Street. In no event shall the total of said upgrades exceed \$10,000.00.

In return, Newport Towing, LLC agrees as the Lessee/Tenant in Interest of the relevant Port property to relinquish all rights, claims of necessity, or similar interests in the relevant portions of West 2nd Street, aside from reasonable utility easements.

It is mutually understood between the District and Newport Towing, LLC that all such upgrades to the property shall be contingent upon the Port and the City of Newport similarly agreeing to relinquish all rights, claims of necessity, or similar interests in the relevant portions of West 2nd Street, aside from reasonable utility easements.

Please feel free to contact me with any questions you might have concerning this letter.

Sincerely,

Chris Jones
Director of Operations and Engineering
Pend Oreille County PUD #1

Accepted and Agreed by:

John Jackson
Newport Towing LLC