3358

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is made and entered into by and between Seal Rock Water District, an Oregon domestic water supply district formed under ORS Chapter 264 ("DISTRICT"), and the City of Newport, an Oregon municipal corporation formed under ORS Chapter 221 ("CITY").

RECITALS

WHEREAS, the parties hereto desire to enter into this Agreement to mutually provide operational water supply in an emergency, or necessary condition, through a physical intertie between the DISTRICT water system and the City water system; and

WHEREAS, the intertie is a facility that was relocated and upgraded through funding provided by FEMA's Hazard Mitigation Grant Program in 2015 to facilitate the mutual supply of water; and

WHEREAS, the parties acknowledge that they have lawful authority to execute this Agreement; and being fully advised,

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

1. **Emergency Condition**: An emergency condition is an occurrence created by a physical failure or scheduled shutdown of any water supply facility that would cause an insufficient supply of water to customers and thereby threaten their health and safety. An emergency does not have to be "declared" by either party to trigger this cooperative Agreement. The City Manager, Public Works Director, General Manager, System Direct Responsible Charge (DRC) or official designee for each party are authorized to request use of the emergency intertie pump station.

2. **Location of Water System Intertie**: The water system intertie between CITY and DISTRICT is located at 7762 Oregon Coast Hwy (SE 72nd Street and Oregon State HWY 101).

3. **Intertie Description**: The water system intertie is contained within a masonry block building. Approximately 50 feet of 12-inch water line extends from the CITY owned 12-inch water line located along the east side of HWY 101 to the masonry block building. A separate 50 feet of 12-inch water line extends from the DISTRICT owned 12-inch water line located along the east side of HWY 101 to the same masonry block building. Pumps, valves and pipe inside the masonry building connect the two systems together. The masonry block building contains two pumps, a bi-directional metering device, control valves, water quality analysis equipment, SCADA Monitoring System, backup generator, and associated isolation valves and piping. Hereinafter, this masonry building is known as the "SRWD/Newport Intertie Pump Station".

Water flow is monitored and recorded electronically, and the same data is shared by both the CITY and DISTRICT. The water station bi-directional water meter records readings in both directions and records the readings separately. The unit of measurement is gallons. Water traveling from DISTRICT to the CITY is recorded separately from the water traveling from the CITY to DISTRICT. This method of recording allows for accurate billing purposes between the two entities.

The water system intertie connects the respective water systems as described in a manual entitled; *SRWD/Newport Intertie Pump Station Operation/Maintenance Procedures Manual*, dated August 8, 2015. The system connects DISTRICT's distribution system to the CITY's distribution system.

4. **Title to and Insurance of Intertie Facilities:** Title and the obligation to insure the intertie facilities shall be based upon facility ownership as more particularly described herein and in the *SRWD/Newport Intertie Pump Station Operation/Maintenance Procedures Manual* referenced above and as depicted in ATTACHMENT A. DISTRICT facilities shall include the pump station masonry building, emergency generator, pumps, drives, supporting equipment and all fittings, valves, and related appurtenances associated with the Intertie Facility. CITY facilities shall include all piping extending from the CITY's distribution system to the first connection point with the Intertie Facility including fire hydrants, valves, and related appurtenances; and shall also include the transducer, PLC, and associated fiber and ductwork (hereinafter referred to as SCADA) that allows the City to view and trend the flow meter owned by SWRD.

5. **Operation & Maintenance of Intertie Pump Station:** Supply to CITY from DISTRICT via the afore-described facilities will be by gravity from and through the pump station. Supply to DISTRICT from CITY will be by pumping from the station. CITY and DISTRICT shall each be responsible for maintenance and replacement of their respective facilities as described above. Electricity costs associated with operating the Intertie Facility shall be the responsibility of DISTRICT. Upon reasonable advanced notice, DISTRICT shall provide the CITY or its contractors access to the Pump Station for maintenance and/or repair of the CITY's SCADA.

6. **Annual Meeting:** CITY and DISTRICT agree to meet once per year in February, or as needed, to review and update operation and maintenance needs of the intertie and to confer on potential rate adjustments for continued emergency wholesale water usage. Any and all changes will be documented and copies provided to both parties.

7. **Quantity of Water Supplied in Emergency Conditions:** The party supplying water during an emergency condition as defined herein shall endeavor to provide a continuous and uninterrupted supply of water to the other party and will take all reasonable actions necessary to accomplish the same so long as such actions are consistent with minimum standards for the operation of its own internal water system, and does not otherwise jeopardize the ability of the party to provide sufficient water to its own customers.

8. **Cost of Water Provided:**

   a) CITY and DISTRICT agree to provide emergency water through the intertie facilities at a wholesale rate consistent with 80 percent of the City's commercial variable rate for FY 2022-2023 of $5.36/thousand gallons. 80 percent of this amount would be a rate of $4.29/thousand gallons.

   b) CITY and DISTRICT agree to review this rate annually and agree that future wholesale rate adjustments be consistent with Cost of Living Adjustments (COLA), or by some other factor agreed to by CITY and DISTRICT.

   c) CITY and DISTRICT agree that emergency wholesale water is not subject to base fees or administrative fees.

   d) CITY and DISTRICT agree to pay for all emergency water provided through the intertie facilities based on the rate structure described above in subsection (b).

   e) The volume of water delivered shall be metered by CITY/DISTRICT using real-time data recorded through each party's separately owned, operated, and maintained computerized monitoring systems to record flows through the Intertie.

   f) Metered water usage will be read and billed by both parties monthly.

g) DISTRICT will provide CITY with continuous non-emergency water from a ¾-inch meter located at the intertie pump station to raise disinfectant levels (CL2) in the CITY's distribution system. Usage rate will be consistent with DISTRICT's Domestic Inside District Water Charges which are subject to rate adjustment annually.

9. **Detrimental Operational Impacts to Parties:** The parties agree to negotiate modifications to this Agreement as necessary to prevent any future potential detrimental operational impacts to respective distribution systems as a result hereof.

10. **Amendment Provisions:** The terms of this Agreement may be amended or modified by mutual agreement of the parties. Any amendments shall be in writing and shall refer specifically to this Agreement and shall be executed by the parties.

11. **Termination of Agreement:** This Agreement shall continue in effect until terminated by DISTRICT or CITY with a 30-day written notice for such intent to terminate provided to the other party. Termination of this Agreement shall not affect ownership status of the intertie facilities herein above described.

12. **Written Notice Addresses:** All written notices required under this Agreement shall be sent by certified mail, return receipt requested, to the following addresses:

DISTRICT:	General Manager Seal Rock Water District 1037 NW Grebe Street Seal Rock OR, 97376	CITY:	City Manager City of Newport 169 SW Coast Hwy Newport OR, 97365

13. **Severability:** If any part, term, or clause of this Agreement is found to be unenforceable, of no effect or in conflict with any law, the validity of the remaining provisions and clauses of this Agreement shall not be affected.

14. **Liability to Third Parties:** To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act (ORS 30.260 to 30.300), and to the extent otherwise provided for in private contracts of insurance, both the CITY and DISTRICT agree to indemnify, defend, and hold the other and its officers, employees, or agents, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the indemnifying party's negligence in the performance of or failure to perform under this Agreement. No party to this Agreement will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of another party or third party, or that other party's own officers, employees, or agents. Indemnity and defense for claims arising during the term of this Agreement shall survive expiration or termination of this Agreement.

15. **Additional Insureds:** Both the CITY and DISTRICT agree to obtain and maintain in force at all times during the term of this Agreement a policy or policies of general liability insurance with liability limits of at least $2,000,000 (two million dollars) per occurrence and $3,000,000 (three million dollars) in the annual aggregate, with the CITY policy or policies naming the DISTRICT and its officers, employees, and agents as additional insureds, and the DISTRICT policy or policies naming the CITY and its officers, employees, and agents as additional insureds.

16. **Entire Agreement:** This Agreement contains the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior agreements, commitments, representations, and discussions between the parties, whether written or verbal, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties, by the signature of their authorized representative executed this Agreement effective on the date shown below each signature.

Seal Rock Water District (DISTRICT):

By: A. Denlinger

Printed Name: Adam Denlinger

Title: General Manager

Date: July 14, 2022

City of Newport (CITY):

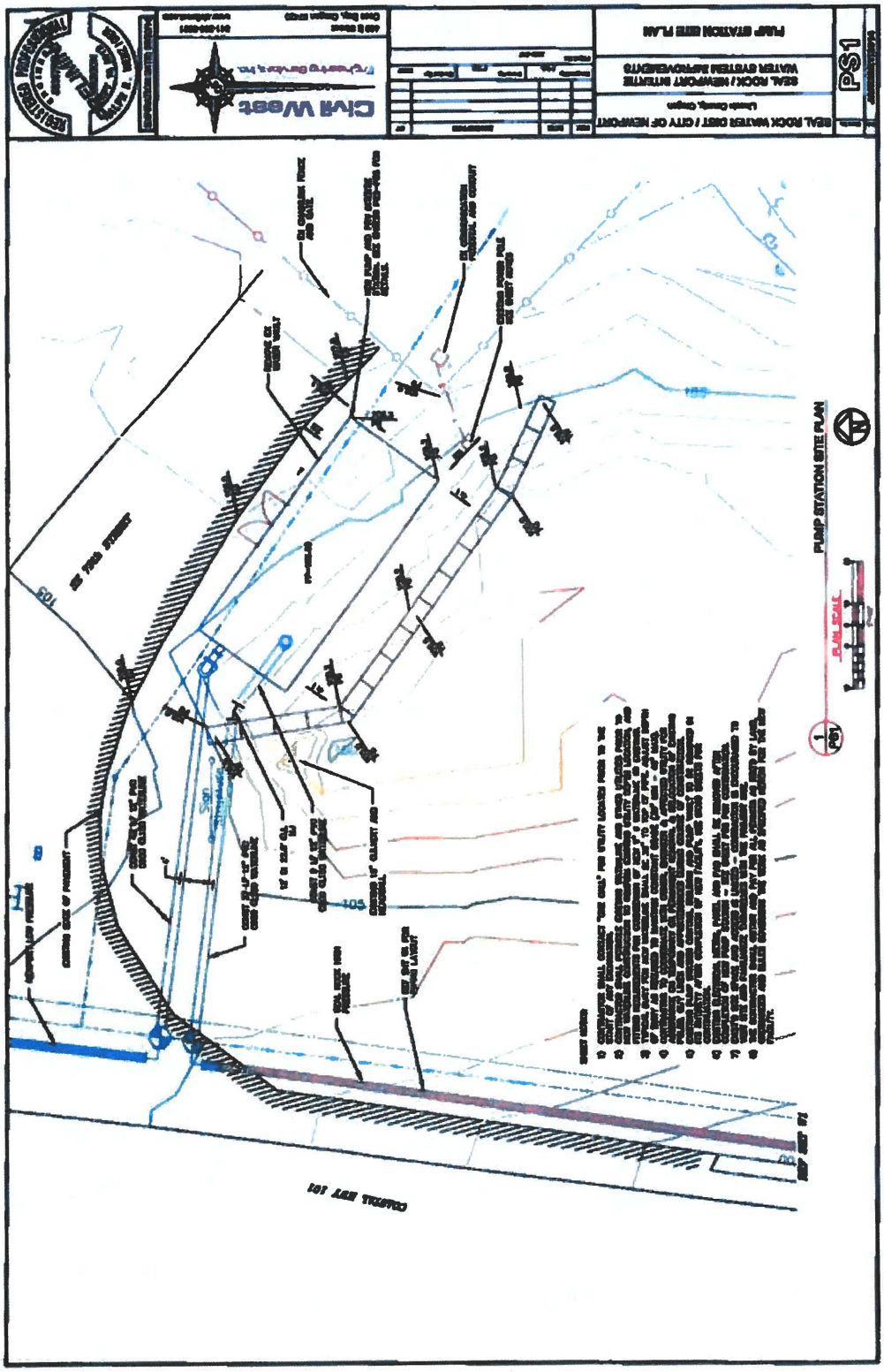
By: [signature]

Printed Name: Spencer Nebel

Title: City Manager

Date: 07-06-2022

ATTACHMENT A



Melanie Nelson

From: David Allen
Sent: Wednesday, July 06, 2022 3:47 PM
To: Adam Denlinger; Spencer Nebel; David Powell; Melanie Nelson; Clare Paul
Cc: 'Jeff Hollen'; 'JCHollen1950@gmail.com'; Peggy Hawker; Erik Glover
Subject: Re: Seal Rock / Newport Intertie MOU - final draft for June 20 council agenda packet
Attachments: SRWD-City of Newport intertie MOU - final.doc; Attachment A to intertie MOU.doc

Attached is the MOU along with Attachment A for signature ('Draft' watermark removed and footer updated). --David

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From: Adam Denlinger <ADenlinger@srwd.org>
Sent: Wednesday, July 6, 2022 8:29 AM
To: Spencer Nebel; David Allen; David Powell; Melanie Nelson
Cc: 'Jeff Hollen'; 'JCHollen1950@gmail.com'; Peggy Hawker
Subject: RE: Seal Rock / Newport Intertie MOU - final draft for June 20 council agenda packet

Thanks Spencer,

Adam Denlinger
General Manager, Seal Rock Water District
Co-Convener, Mid-Coast Water Planning Partnership
Board Member, Special District Association of Oregon
1037 NW Grebe Street |Seal Rock OR. 97376
O: 541.563.3529 | F: 541.563.4246 | M: 541.270.0183|adenlinger@srwd.org
www.srwd.org |www.midcoastwaterpartners.com |www.SDAO.com

Seal Rock Water District strives to be a high performance organization that provides exceptional customer service, promoting healthy lifestyles, enriching Seal Rocks unique character at responsible rates.

From: Spencer Nebel <S.Nebel@NewportOregon.gov>
Sent: Wednesday, July 6, 2022 8:24 AM
To: Adam Denlinger <ADenlinger@srwd.org>; David Allen <D.Allen@NewportOregon.gov>; David Powell <D.Powell@NewportOregon.gov>; Melanie Nelson <M.Nelson@NewportOregon.gov>

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Seal Rock Water District (DISTRICT):

By:_____

Printed Name: Adam Denlinger

Title: General Manager

Date:_____

City of Newport (CITY):

By:_____

Printed Name: Spencer Nebel

Title: City Manager

Date: 07-06-2022

ATTACHMENT A