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7 SUPERIOR COURT OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

8 RESPONSIBLE GROWTH \*NE WASHINGTON;  
9 CITIZENS AGAINST NEWPORT SILICON  
10 SMELTER; THEODORE & PHYLLIS KARDOS;  
11 DENISE D. TEEPLES; GRETCHEN L. KOENIG;  
12 SHERYL L. MILLER; JAMES W. & ROSEMARY  
CHANDLER; and PAMELA BYERS LUBY,

13 Petitioners-Plaintiffs,

14 v.

15 PEND OREILLE PUBLIC UTILITY DISTRICT  
16 NO. 1; PEND OREILLE COUNTY; and HITEST  
SAND, INC.,

17 Respondents-Defendants.  
18

No. 18202551-1

DECLARATION OF F. COLIN  
WILLENBROCK IN SUPPORT  
OF DISTRICT'S MOTION FOR  
SUMMARY JUDGMENT

19 I, F. Colin Willenbrock, declare as follows:

20 1. I am the General Manager of Public Utility District No. 1 of Pend Oreille  
21 County (the "District"). I have been in this position since 2015. Prior to holding this position,  
22 I was the District's General Counsel and Assistant General Manager. My testimony is based on  
23 my personal knowledge, and I am competent to testify.

24 2. The District is a non-profit municipal corporation organized under RCW Title  
25 54. The District's service boundary is limited to Pend Oreille County, which is one of the most  
26 economically depressed counties in the State of Washington.

DECLARATION OF F. COLIN WILLENBROCK IN SUPPORT OF  
DISTRICT'S MOTION FOR SUMMARY JUDGMENT - 1

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SPOKANE, WASHINGTON 99201-5102  
PHONE (509) 777-1600 FAX (509) 777-1616

1           3.       The District is governed by a three-member board of commissioners ("Board").  
2 As General Manager, I attend all Board meetings unless I am otherwise unavailable.

3           4.       I am familiar with and have access to the District's records relevant to this case.

4           5.       In or around 1996, the District purchased three parcels of land within the  
5 District's boundary, Parcel Nos. 17036, 19183 and 19193 (the "District Properties"). The  
6 District Properties were purchased for a planned turbine electricity plant, but plans for the  
7 turbine plant were scuttled, and the property was thereafter managed for timber.

8           6.       In February 2016, at the Commission's direction, the District undertook an  
9 evaluation of its holdings to identify real property that was no longer needed or useful to the  
10 District.

11          7.       The District's Board declared the District Properties as surplus to the District's  
12 needs at a public meeting on March 15, 2016. A true and correct copy of the minutes of the  
13 March 15, 2016 Board meeting is attached as **Exhibit A**.

14          8.       The District advertised the District Properties for sale on August 31, 2016, and  
15 September 7, 2016, but did not receive any offers to purchase them. A true and correct copy of  
16 the District's public notice of sale for the District Properties and affidavit of publication is  
17 attached as **Exhibit B**.

18          9.       On April 18, 2017, the District received an inquiry and request for electric  
19 service from HiTest Sand Inc. ("HiTest"). A true and correct copy of HiTest's letter request is  
20 attached as **Exhibit C**.

21          10.      By letter, HiTest also expressed interest in purchasing the District Properties,  
22 together with an adjacent fourth parcel that was owned by Pend Oreille County ("Parcel No.  
23 19182").

24          11.      The District sought to acquire Parcel No. 19182 from Pend Oreille County to  
25 reserve an express easement on that property.  
26

1           12.     The County authorized the sale of its property to the District, at the tax assessed  
2 value, on June 20, 2017. A true and correct copy of the County's Resolution No. 2017-22  
3 authorizing this sale is attached as **Exhibit D**.

4           13.     In the meantime, the District signed a tentative Letter of Intent and received  
5 earnest money for the properties from HiTest on April 25, 2017. A true and correct copy of the  
6 Letter of Intent is attached as **Exhibit E**.

7           14.     The District signed a revised Letter of Intent on June 13, 2017. A true and  
8 correct copy of the revised Letter of Intent is attached as **Exhibit F**. The District sent a draft  
9 Purchase Agreement to HiTest on June 16, 2017. A true and correct copy of the draft Purchase  
10 Agreement is attached as **Exhibit G**.

11           15.     Parcel No. 19182, once subject to the easement, was no longer necessary or  
12 useful in the District's operations.

13           16.     I attended the Board's regularly scheduled meeting on August 1, 2017. During  
14 the regularly scheduled meeting of the District's Board of Commissioners, held August 1,  
15 2017, the attending public was given the opportunity to be heard on the matter of the sale of the  
16 District Properties and Parcel No. 19182 to HiTest. A true and correct copy of the minutes of  
17 this meeting is attached as **Exhibit H**.

18           17.     After extensive discussion, the District's Board of Commissioners determined  
19 that Parcel No. 19182, once subject to the easement, was unfit for and no longer necessary or  
20 useful in system operations, such that it should be sold for its fair market value. The District  
21 Properties had previously been declared surplus.

22           18.     The Commission unanimously adopted Resolution No. 1399, expressing its  
23 intent to sell the four-parcel package (Parcel Nos. 17036, 19183, 19193, and 19182) to HiTest  
24 following final appraisal and due diligence. A true and correct copy of Resolution No. 1399 is  
25 attached as **Exhibit I**.

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DECLARATION OF F. COLIN WILLENBROCK IN SUPPORT OF  
DISTRICT'S MOTION FOR SUMMARY JUDGMENT - 3

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1           19.     The District purchased and received title to the Parcel No. 19182 by a tax title  
2 property deed recorded August 2, 2017. A true and correct copy of this deed is attached as  
3 **Exhibit J.**

4           20.     The District contracted with Valbridge Property Advisors to render an  
5 independent appraisal of the fair market value of the District Properties and Parcel No. 19182.  
6 Valbridge Property Advisors appraised the four-parcel package at \$250,000. A true and correct  
7 copy of relevant portions of the appraisal is attached as **Exhibit K.**

8           21.     The District and HiTest executed a Real Estate Purchase and Sale Agreement for  
9 the four properties on August 21, 2017, for a total purchase price of \$300,000 (\$50,000 more  
10 than the appraised value). A true and correct copy of this agreement is attached as **Exhibit L.**

11           22.     The District executed and recorded a Special Warranty Deed for the sale of the  
12 four properties to HiTest on September 18, 2017. A true and correct copy of the Special  
13 Warranty Deed is attached as **Exhibit M.**

14           23.     The District subsequently recorded a corrected Special Warranty Deed for the  
15 sale of the four properties to HiTest on May 14, 2018, correcting the express easement  
16 reservation. A true and correct copy of this deed is attached as **Exhibit N.**

17           24.     The District announced its sale of the properties to HiTest in a press release  
18 dated September 19, 2017. A true and correct copy of this press release is attached as **Exhibit**  
19 **O.**

20           25.     In early October 2017, HiTest began the application process for the permits  
21 necessary to build its production facility. Like the sale, this was announced in a press release.  
22 A true and correct copy of this press release is attached as **Exhibit P.**

23           26.     In mid-December 2017, HiTest submitted a formal request for power service to  
24 the PUD. A true and correct copy of the request for service is attached as **Exhibit Q.** This was  
25 also announced in a press release from the PUD, a true and correct copy of which is attached as  
26 **Exhibit R.** In that announcement, the PUD provided the public with details of the financial



1 investment HiTest was making so that the PUD could conduct the studies and engineering work  
2 necessary for power delivery at the proposed facility.

3 27. On May 15, 2018, the District's Board of Commissioners unanimously adopted  
4 Resolution 1411. A true and correct copy of Resolution No. 1411 is attached as **Exhibit S**.

5 28. Resolution 1411 affirmed and ratified the District's purchase of Parcel No.  
6 19182, the determination that Parcel No. 19182 was surplus to the District's needs after  
7 reserving an express utility easement, and the sale of Parcel No. 19182, along with the District  
8 Properties, to HiTest.

9 I certify under penalty of perjury under the laws of the State of Washington that the  
10 foregoing is true and correct.

11 DATED this 25<sup>th</sup> day of September, 2018.

12   
13 F. COLIN WILLENBROCK  
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## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 19<sup>th</sup> day of October, 2018, I caused the foregoing document to be served on the parties as indicated below.

Richard K. Eichstaedt University Legal Assistance 721 N. Cincinnati St. PO Box 3528 Spokane, WA 99220-3528 <a href="mailto:eichstaedt@gonzaga.edu">eichstaedt@gonzaga.edu</a> <a href="mailto:yount@gonzaga.edu">yount@gonzaga.edu</a> <a href="mailto:mmurdock@lawschool.gonzaga.edu">mmurdock@lawschool.gonzaga.edu</a> <a href="mailto:abell4@lawschool.gonzaga.edu">abell4@lawschool.gonzaga.edu</a> <i>(Attorneys for Petitioner-Plaintiffs Responsible Growth *Ne Washington and Theodore &amp; Phyllis Kardos)</i>	<input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-mail <input type="checkbox"/> Via U.S. Mail, postage prepaid
Dylan A. Eaton Norman M. Semanko Parsons Behle & Latimer 800 West Main St., Suite 1300 Boise, ID 83702 <a href="mailto:deaton@parsonsbehle.com">deaton@parsonsbehle.com</a> <a href="mailto:nsemanko@parsonsbehle.com">nsemanko@parsonsbehle.com</a> <i>(Attorneys for Petitioners-Plaintiffs Citizens Against Newport Silicon Smelter, Denise D. Teeple, Gretchen L. Koenig, Sheryl L. Miller, James W. and Rosemary Chandler, and Pamela Byers Luby)</i>	<input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-mail <input type="checkbox"/> Via U.S. Mail, postage prepaid
Nathan G. Smith Brian E. Kistler Kutak Rock, LLP 510 W. Riverside, Ste. 800 Spokane, WA 99201 <a href="mailto:Brian.Kistler@KutakRock.com">Brian.Kistler@KutakRock.com</a> <a href="mailto:Nathan.Smith@KutakRock.com">Nathan.Smith@KutakRock.com</a> <a href="mailto:Colleen.Sebo@KutakRock.com">Colleen.Sebo@KutakRock.com</a> <i>(Attorneys for Respondent-Defendant Pend Oreille County)</i>	<input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-mail <input type="checkbox"/> Via U.S. Mail, postage prepaid

DECLARATION OF F. COLIN WILLENBROCK IN SUPPORT OF  
DISTRICT'S MOTION FOR SUMMARY JUDGMENT - 6

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15 (*Attorneys for Respondent-Defendant HiTest*  
16 *Sand, Inc.*)

[ ] Via Facsimile  
[ ] Via Legal Messenger  
[X] Via E-mail  
[ ] Via U.S. Mail, postage prepaid



Pamela S. Miller  
Legal Assistant

## **EXHIBIT A**

Minutes of  
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY  
March 15, 2016  
NEWPORT CONFERENCE ROOM, NEWPORT, WA

Present: Richard A. Larson, President  
Daniel L. Peterson, Vice President  
Curtis J. Knapp, Secretary

Staff Present: Colin Willenbrock, General Manager  
Management/District Staff  
Karen Willner, Clerk of the Board

Others: Matt Andersen, Winston & Cashatt Lawyers, via teleconference  
Steve Kiss, Member of the Public  
Geoffrey Thompson, Member of the Public

The meeting was called to order at 8:04 a.m. by Richard A. Larson, President.

CONSENT AGENDA:

The minutes from the March 1, 2016 meeting and today's revised agenda were reviewed.

Vouchers audited certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been made available to the Board. As of this date, March 15, 2016, the Board, upon motion by Commissioner Knapp and seconded by Commissioner Peterson approved the following:

- The minutes of March 1, 2016 meeting and the revised agenda for March 15, 2016.
- Payment of those vouchers, included in the list referred to above and further described as follows: Voucher Nos. 92635 through 92744 in the total amount of \$463,407.28; Wire Transfer Nos. 1328 through 1332 in the total amount of \$140,438.48; and ACH payroll transactions in the total amount of \$221,265.98 for the payroll ending February 29, 2016.
- Reserve for Bad Debt in the total amount of \$5,430.44; Electric System total is \$5,189.36 and the Metaline Falls Water System total is \$241.08.

EXECUTIVE SESSION – PENDING AND/OR POTENTIAL LITIGATION:

A 40-minute attorney/client privileged executive session on pending and/or potential litigation commenced at 8:05 a.m. The following were in attendance: Board of Commissioners; Colin Willenbrock, General Manager; and Matt Andersen, Winston & Cashatt Lawyers, via teleconference. The executive session adjourned at 8:45 a.m. and the Board returned to open session. There was no final action taken.

BOARD WORKSHOP:

Bryant Kramer, District Senior System Operator, appeared before the Board with an education tuition reimbursement request. He explained the program details. Discussion was held. A motion was made by Commissioner Peterson and seconded by Commissioner Knapp to approve the employee education tuition reimbursement. The motion passed unanimously.

Discussion was held regarding a Cowlitz PUD draft resolution for Initiative 732.

COMMISSION REPORT:

Commissioners Knapp and Peterson attended a Northwest Open Access Network Board Meeting on March 9 in Spokane. They provided an overview of the meeting.

Commissioner Peterson attended a Colville National Forest Plan Revision public meeting on March 8 in Ione and provided an overview. He attended a Northwest Public Power Association (NWPPA) Government Relations Committee meeting on March 10 in Coeur d'Alene.

Commissioner Larson attended a North Pend Oreille County Chamber meeting on March 10 in Ione and provided an overview. Discussion was held.

#### COMMISSION BUSINESS:

Discussion was held regarding Board attendance to the NWPPA Annual Conference.

- Cusick's Annual Easter Egg Hunt Funding Request. There was no action taken due to a lack of a motion.
- Northwest Public Power Association Annual Conference Voting Delegate. A motion was made by Commissioner Knapp and seconded by Commissioner Larson to nominate Commissioner Peterson as the District's voting delegate. The motion passed unanimously.

Commissioner Peterson will attend a Washington Public Utility Districts Association meeting on March 16 – 18 in Olympia. He will tentatively attend a Spokane River Forum on March 23 – 24 in Coeur d'Alene.

Commissioner Larson will attend an Economic Development Council (EDC) meeting on March 16 in Ione, a Forest Service recreation meeting on March 17 at Sullivan Lake, a Mill Pond Dam meeting on March 23 at the Cutter Theatre, and another EDC meeting on March 24 in Newport.

#### SAFETY FIRST:

Colin Willenbrock, District General Manager, provided background information on the District's membership with Energy Northwest and the safety audit.

Cecil Taylor, District Safety & Environmental Coordinator, provided an overview of Energy Northwest's safety audit of the District. Discussion was held.

#### CUSTOMER FIRST:

Discussion was held regarding a customer's request to the District to do a collar installation on their generator.

#### MANAGEMENT REPORT:

##### Colin Willenbrock, General Manager:

- He attended a Public Power Council meeting on March 3 in Portland..
- He attended a Manager's meeting with Elliot Mainzer, Bonneville Power Administration (BPA) Administrator, on March 2 in Portland and provided an overview.
- He had a meeting with Chad Jensen, Inland Power & Light CEO, on March 11 in Spokane. Discussion was held.

##### Eileen Dugger, Contracts & Public Information Administrator:

She is working on the District's 2015 Annual Report and the quarterly customer newsletter which will be distributed in April.

She reported the District received four bid submittals for the architectural design of the customer service and engineering areas. The bids were due today.

She reported that information regarding a Foundation for Water and Energy Education Hydropower and Science, Technology, Engineering, and Math Career Academy was sent to all District employees and the local school districts. The event will be held on June 20 – 24 at Rocky Reach Dam in Wenatchee. Discussion was held.

Kim Gentle, Director, Power & Risk Management:

She reminded staff that the District has three customers who generate into our system. The third customer recently submitted the necessary paperwork that was needed to participate.

She and Christy Parry, District Utility Data Analyst, attended a WSPP meeting on March 2 – 4 in Banff, Canada and reported there was good conversation and information. Discussion was held.

Sandra Pea, Compliance Manager:

She reported that the Federal Energy Regulatory Commission has granted an extension for the effective date of the revised Critical Infrastructure Protection Reliability Standards from April 1, 2016 to July 1, 2016.

Robert Fritz, Community Network System Supervisor:

He reported fiber crews are doing installs and turn ups. Staff is working on fiber quotes and has three new fiber builds to do when the weather permits.

He reported staff is getting ready to do the wireless implementation in Metaline Falls and Ione. They are working to secure easements and the project timeframe is this fall. They are preparing to do switching on the Metaline Falls cell tower and will have a full crew on site.

He reported maintenance on substations will be done in the next few weeks.

Discussion was held regarding an offer on the cell tower in Metaline Falls.

Cecil Taylor, Safety & Environmental Coordinator:

He provided a safety update and reported there were two recent incidents where a member of the public backed their vehicle into a District vehicle and a member of the public made a u-turn in front of a District employee causing the employee to run into that person's car.

He reported the District has an average 90% safety meeting attendance with a couple of groups at 100%. He reported the safety meetings are going well and provided the safety meeting topics for the month of April.

Chris Jones, Director, Distribution, Engineering & Operations:

He reported the line crews are doing franchise work on Highway 211 by Davis Lake, building the underbuild on Deer Valley Road, and installing more underground on Westside Calispell Road. Maintenance work is occurring for the Geographic Information System mapping and crews are adding fuses and changing out poles in Metaline. The tree trimming crews are working on danger tree removal.

He has been working on revising the budget.

He reported that crews are also working on a light emitting diode lighting retrofit project for street lights and customer yard lights. This project is funded by BPA energy conservation money.

He reported Shawn Ellsworth, District System Operator Trainee, has been training in System Operations and should be ready in late fall.



He reported line crews, tree trimming crews, and mechanics are now on a four day-10 hour a day work shift working 6:00 a.m. – 4:30 p.m.

April Owen, Director, Finance/Auditor:

She and staff are finishing work on the District's audit and Olga Darlington, Moss Adams Auditors, will provide a review to the Board and staff in April. A major focus is on the Governmental Accounting Standards Board Statement 68 which relates to the District's Public Employees' Retirement System pension plan. Discussion was held.

She will attend a Public Generating Pool meeting on March 24 in Seattle.

She and staff are working on changes to the financial reporting system which will improve the timeliness of the monthly financial report package. Discussion was held.

BREAK/BUSINESS FROM THE PUBLIC:

The meeting recessed for a 10-minute break. There was no business from the public.

MANAGEMENT REPORT (continued):

Mark Cleveland, Power Production Manager:

He reported that Autumn Rice, District Administrative Secretary/Customer Service Representative, was selected to fill the Administrative Assistant, Regulatory Affairs job position when Nancy Thompson retires from the District in June. Ms. Rice will start transitioning into that job position tomorrow.

He reported north Pend Oreille County has received low level rain which has decreased the low level snowpack causing the Calispell Creek flows to increase and the necessity to lower the Pend Oreille River in the Ione area. Box Canyon Dam drawdown occurred yesterday.

He will attend a meeting with the Army Corps of Engineers on March 21 at Box Canyon Dam to discuss the Albeni Falls Dam operations.

He reported that an internal audit of the Supervisory Control and Data Acquisition System will be done on March 21.

He provided an update on the status of turbine unit #1 and reported the turbine shaft and control rod need to be repaired. A letter was sent to Andritz to fix the defective work. Discussion was held.

Paul Boxleitner, Human Resources Manager:

He thanked Mr. Cleveland for his support in Ms. Rice's job transition from the Box Canyon office to the Newport office.

He reported that Lloyd Clark has been hired as the new Human Resources Manager and will start at the District tomorrow. He will attend the staff meeting at Box Canyon on Thursday as an introduction to the staff.

He reported the District will have one new summer student helper job opening at Box Canyon this summer.

Sarah Holderman, Treasurer/Customer Services Manager:

She has been working on the amended budget and gathering data related to 2015 storm damage to submit to the Federal Emergency Management Agency. She reported that all data related to fiber has been submitted, and electric damages should be submitted in the next few weeks.

Mark Cauchy, Director, Regulatory & Environmental Affairs:

He reported the hiring process for Ms. Thompson's job was difficult as the District has many talented employees who applied for the position.

He will attend a public meeting to discuss the Mill Pond Dam on March 23 at the Cutter Theatre.

He and Scott Jungblom, District Resource Biologist, recently had an opportunity to see a WHOOSHH Transport System for fish passage in Coeur d'Alene. This application may have some potential in the future for the District. Mr. Jungblom explained how the system works.

Mr. Cauchy reported the District will do its annual fish plant in late spring at Power Lake and Campbell Pond.

He reported the District has received interest in the purchase of the Sullivan Powerhouse.

Tommy Petrie, Wildlife & Habitat Specialist:

He reported the District has an opportunity to partner with Gonzaga University students in doing a wood duck reproduction. He provided an overview of the District's wildlife management areas and the process. Discussion was held.

Scott Jungblom, Resource Biologist:

He will be collecting fish on the Pend Oreille River to do a downstream fish study. He explained there are changes on lessening restrictions for how the District can collect fish. He will start collecting fish next week. Discussion was held.

PUBLIC HEARING – SURPLUS REAL PROPERTY DISTRICT LANDS:

Pursuant to notice given to the Newport Miner a public hearing to surplus real property District lands commenced at 11:00 a.m. There were two members of the public in attendance.

Mr. Cauchy gave a presentation on the District's real property lands that the District is proposing to surplus and sell. The properties are: Newport South; Calispell Lake East; and these properties in the Sullivan Lake area: Harvey Creek, Mill Pond Flume, Sullivan Creek Flume, and North Fork Sullivan Creek. He provided the locations and details of each property. Discussion was held.

Commissioner Larson asked for public comments/questions. Public comments included that these properties are valuable assets and provide county revenue now and in the future.

The public hearing adjourned at 11:29 a.m.

PUBLIC HEARING – 2016 BUDGET AMENDMENT:

Pursuant to notice given to the Newport Miner a public hearing to amend the 2016 Budget commenced at 11:30 a.m. There were no members of the public in attendance.

Ms. Holderman explained the District wants to be proactive in growing reserves. She gave a presentation on cost reductions in labor due to attrition and on current projects. She reported the District will go out for bond funding in October and the District will be looking to increase the Box Canyon and Electric System reserves. She reported the District is proposing a \$62 million consolidated revised budget.

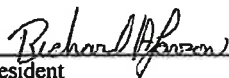
Commissioner Larson asked for comments/questions from District staff. Comments/questions included information on the District's bond agency. The public hearing adjourned at 11:56 a.m.

ACTION ITEMS:

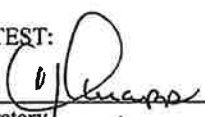
- Declaration of Surplus Real Property – District Lands. Based on staff recommendation, a motion was made by Commissioner Knapp and seconded by Commissioner Peterson to declare various District lands as being no longer necessary, material to, or useful in the operations of the District and, therefore, surplus to the needs of the District. The motion passed unanimously.
- Resolution No. 1383 – 2016 Budget Amendment. A motion was made by Commissioner Knapp and seconded by Commissioner Peterson to adopt the resolution. The motion passed unanimously.
- Bid Award – Box Canyon Upstream Fish Passage, Contract No. 16-002. Mr. Willenbrock provided an explanation. Based on staff recommendation, a motion was made by Commissioner Peterson and seconded by Commissioner Knapp to award the bid to the low apparent bidder, J.W. Fowler Company in the total amount of \$36,327,912.00. The motion passed unanimously.
- Damage Claim. Mr. Jones explained the details. Based on staff recommendation, a motion was made by Commissioner Knapp and seconded by Commissioner Peterson to pay the damage claim in the total amount of \$220.58. The motion passed unanimously.

Following a 60-minute working lunch, the meeting resumed.

There being no further discussion to come before the Board, the meeting adjourned at 2:00 p.m.

  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
General Counsel

Approved as to Form

## **EXHIBIT B**

2018301  
PUBLIC NOTICE  
NOTICE OF SALE  
SURPLUS REAL ESTATE PROP-  
ERTIES FOR SALE

PUBLIC UTILITY DISTRICT NO. 1  
OF PEND OREILLE COUNTY  
Public Utility District No. 1 of Pend  
Oreille County (District) has declared  
the following real estate properties  
as no longer necessary, material  
to, or useful in the operations of the  
District and, therefore, surplus to the  
needs of the District:

- Property No. 1 (Newport South):  
Three tax parcels (Pend Oreille Prop.  
IDs: 17036, 19183, 19193), 172.47  
acres located about one-half mile  
south of the Newport city limits.  
Brief legal description: E1/2 NE 1/4  
of Sec. 27, T31N, R45E; Gov't Lots  
2, 3, and 4 of Sec. 30, T31N, R46E,  
W.M. Fair Market Value: \$245,000
- Property No. 2 (Mill Pond Flume):  
One tax parcel (PID 7915), 52.6  
acres located about 2.5 miles south-  
east of Metaline Falls just south of  
Mill Pond. Brief legal description:  
NW1/4 SE1/4, N1/2 SW1/4 N1/4E,  
Portion SE1/4 NW1/4, Sec. 25,  
T39N, R43E, W.M. Market Value:  
\$33,000.

- Property No. 3 (Sullivan Creek  
Flume): Not a separate tax parcel  
and contains approximately 100  
acres. It is located about one-half  
mile east of Metaline Falls. Brief  
legal description: Parcel 1 of RS  
2400 in S1/2 SW1/4 of Sec. 22 and  
NE1/4 NW1/4 of Sec. 27, 39 43,  
and part of Sections 22, 23, 26 and  
27 T39N, R43E, W.M. Fair Market  
Value: \$228,000.

- Property No. 4 (North Fork Sullivan  
Creek): One tax parcel (PID 7914),  
74 acres located about two miles  
east of Metaline Falls. Brief legal  
description: W1/2 SW1/4 of Sec.  
24, T39N, R43E, W.M. Fair Market  
Value: \$313,000.

- Property No. 5 (Pae Wee Falls):  
Two tax parcels (PIDs 8292 & 8293)  
191.15 acres located 7 1/2 miles  
north of Metaline Falls. Brief legal  
description: Gov't Lots 2, 5 and  
shorelands on lots 1, 2, 3, 4, 5, 6  
and 7 in Sec. 14; Gov't Lots 1 & 2  
including shorelands, SE1/4 NE1/4  
of Sec. 15, T40N R43E, W.M. Fair  
Market Value: \$846,000.

These real estate properties will be  
sold as is, without surveys and/or  
title insurance. Bidders must obtain  
a Surplus Real Estate Bid Form,  
which are available on the District's  
website at [www.popud.org](http://www.popud.org), or by  
contacting the District's Contract  
Administrator at (509)447-9345.  
The Surplus Real Estate Bid Form  
must be used when submitting bids.  
Bid amounts shall be no less than  
the fair market, as listed above, for  
each property. Sealed bids will be  
received at the District's Newport  
office, 130 N. Washington, P.O. Box  
190, Newport, WA 99156 or at the  
Box Canyon Dam Visitor Center,  
7492 Hwy 31, P.O. Box 547, Ione,  
WA 99139 until 5:00 p.m., Tuesday,  
September 28, 2016.

The sealed bid process will be  
conducted in one or two phases  
described as follows: The first phase  
will consist of sealed bids received,  
as specified above, on or before  
Tuesday, September 6, 2016. Each  
bid MUST be accompanied by an  
individual surety deposit, for the  
amount of \$500.00, in the form of:  
Cashier's Check, Certified Check,  
or Money Order, payable to Public  
Utility District No. 1 of Pend Oreille  
County. In the event that more than  
one bid for any of the properties is  
received, a second phase of the bid  
process will be conducted for the  
property(ies). The second phase  
will consist of advertisement of the  
bid results of the first phase, with  
the opportunity for subsequent bids  
to be submitted in an amount no  
less than 10 percent more than the  
highest bid for each property that  
was submitted in the first phase. If a  
subsequent offer is received, the first  
offeror shall be informed by certified  
mail sent to the address stated in  
his or her offer. The first offeror shall  
then have ten days, from the date of  
mailing the notice of the increased  
offer, in which to submit a higher  
bid of no less than 5 percent more

bid of no less than 5 percent more  
than that of the subsequent offeror.  
After the expiration of the ten-day  
period, the properties will be sold  
to the highest bidders.  
Interested persons may contact  
Mark Cauchy at (509) 447-9331 for  
more information.

Published in The Newport Miner on  
August 31 and September 7, 2016.  
(31-2)

## INVOICE

### The Newport Miner

421 S. Spokane Ave. • Newport, Washington 99156  
(509) 447-2433 or (208) 437-4275  
[www.pendoreillevalley.com](http://www.pendoreillevalley.com)

No. 2016-31 Date August 31, 2016

STATE OF WASHINGTON, Pend Oreille County

### Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of  
The Newport Miner, a weekly newspaper, which newspaper is a legal newspa-  
per of general circulation and it is now and has been for more than six months  
prior to the date of publication hereinafter referred to, published in the English  
language continuously as a weekly newspaper in Newport, Washington, and  
it is now and during all of said time was published in an office maintained at  
the aforesaid place of publication of this newspaper. The Newport Miner was  
on the 24th day of June, 1941 approved as a legal newspaper by the Superior  
Court of said Pend Oreille.

The notice in the exact form annexed, was published in regular issues of The  
Newport Miner, which was regularly distributed to its subscribers during the  
below stated period. The annexed notice. (Attached) was published  
August 31, 2016

The fee charged for the foregoing publication is: \$ 37.25



Subscribed and sworn to before me on

August 31, 2016  
Notary Public in and for the  
State of Washington, Residing in Newport

## **EXHIBIT C**



**HiTEST SAND**  
Responsibly supplying Hi-quality silica

COPY

April 18, 2017

Mr. Colin Willenbrock  
General Manager, Pend Oreille PUD  
PO Box 190  
Newport, WA 99156

RE: REQUEST FOR POWER SERVICES

Mr Willenbrock:

HiTest Sand, Inc through Silicon Investments, Inc. ("SI") has been investigating potential sites and is interested in the PUD owned property located south of Newport. This property is approximately 186.3. The Property is one parcel of 13.83 acres (Property ID # 19182) which is currently owned by Pend Oreille County and three parcels owned by the District (Parcel # 19183) of 39.0 acres, (Parcel # 17036) of 80 acres, (Parcel #19193) of 53.47 acres. The four parcels together combine to a total of 186.3 acres. The purpose of these combined 186.3 acres are for the purpose of operating a silicon smelter plant. Our plant would bring substantial environmentally sustainable economic benefits to the community including up to 170 full time family wage jobs at the site plus several hundred indirect jobs in supporting industries (trucking, wood chip production, retail, etc.) Our business plan, economic model, engineering and offtake agreements are fully developed. We have been highly involved with local and state legislators, the Washington State Department of Commerce, and the Governor's office and have their full support and commitment to expedite the permitting process.

Accordingly, HiTest would like to formally request power supply services from Public Utility District No. 1 of Pend Oreille County (the "District"). Our general requirements are expected to happen in two phases and are as follows:

Phase 1

100 aMW of energy supply  
105 MW of capacity  
95% power factor  
98% load factor  
Minimal interruption requests from the PUD  
Projected full operation 9/2019

#1402 10035 Saskatchewan Dr. Edmonton, AB, T6E 4R4  
Phone: 780-328-6542





**HiTEST SAND**

Responsibly supplying Hi-quality silica

**Phase 2**

Additional 100 aMW of energy supply for a total of 200 aMW

Additional 105 MW of capacity for a total of 210 MW

95% power factor

98% load factor

Minimal interruption requests from the PUD

Projected full operation 9/2022

SI believes our plant, power supply needs and economic benefit could provide a beneficial and well timed solution for the District as well as Pend Oreille County. We look forward to a formal offer of contract for power supply services from the District.

Sincerely,

Jayson Tymko

President

HiTest Sand, Inc.

## **EXHIBIT D**

PEND OREILLE COUNTY  
NEWPORT, WASHINGTON

RESOLUTION NO. 2017-22

RE: Resolution Ordering Sale of Tax  
Title Property

**BACKGROUND**

- A. RCW 36.35. 120 allows the County to sell real property acquired by tax foreclosure when it is found to be in the best interest of the County.
- B. RCW 36.35.120 requires the County to establish the minimum price for each unit of tax title property and to determine whether the sale will be for cash or whether a contract will be allowed.
- C. RCW 36.35.150 allows the County to sell tax title property by direct negotiations, without a call for bids, under certain circumstances. Direct sale for a price not less than the principal amount of the unpaid taxes is authorized when (a) the sale is to any governmental agency and for public purposes, or (b) when the county legislative authority determines that it is not practical to build on property due to the physical characteristics of the property.
- D. The Board of County Commissioners finds it is not practical to build on property identified as Assessor's Parcel No. 19182 as it is land-locked with no road access.
- E. Pend Oreille County Public Utility District (PUD) has inquired into the purchase of Assessor's Parcel No. 19182 as it is adjacent to PUD land and it contains an easement that impacts PUD operations.
- F. Assessor's Parcel No. 19182 is a Tax Title property acquired through a tax foreclosure auction.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Pend Oreille County, Washington, as follows:

- 1. The Board finds it is in the best interest of the County to sell the following real property:  
Assessor's Parcel No. 19182, located in Pend Oreille County, and further described in attached Exhibit A.
- 2. The Pend Oreille County Treasurer is authorized to sell Assessor's Parcel No. 19182 by direct negotiation with the Pend Oreille County PUD no later than August 15, 2017, for a minimum price equal to the total appraised value.

ADOPTED this 20<sup>th</sup> day of June, 2017.

PEND OREILLE COUNTY  
BOARD OF COMMISSIONERS

  
Karen Skoog, Chair

Absent  
Stephen Kiss, Vice-Chair

  
Mike Manus, Member

ATTEST:

  
Clerk of the Board

APPROVED AS TO FORM:

  
Prosecuting Attorney

# Pend Oreille County Assessor & Treasurer

Exhibit A  
Resolution 2017-22

## Property

### Account

Property ID: 19182 Legal Description: 1-56 GOV'T LOT 1 30-31-46  
Geographic ID: 463130010001 Agent Code:  
Type: Real  
Tax Area: 0002 - 1-56 Land Use Code 91  
Open Space: N DFL N  
Historic Property: N Remodel Property: N  
Multi-Family Redevelopment: N  
Township: 31 Section: 30  
Range: 46

### Location

Address: STATELINE RD N Mapsco:  
NEWPORT, WA 99156  
Neighborhood: Exempt Map ID:  
Neighborhood CD: EX2

### Owner


Name: PEND OREILLE COUNTY Owner ID: 16428  
Mailing Address: PO BOX 5080 % Ownership: 100.000000000000%  
NEWPORT, WA 99156-5080  
Exemptions: EX

## Pay Tax Due

There is currently No Amount Due on this property.

## Taxes and Assessment Details

Property Tax Information as of 06/20/2017

Amount Due if Paid on:  **NOTE:** If you plan to submit payment on a future date, make sure you enter the date and click RECALCULATE to obtain the correct total amount due.

Click on "Statement Details" to expand or collapse a tax statement.

Year	Statement ID	First Half Base Amt.	Second Half Base Amt.	Penalty	Interest	Base Paid	Amount Due
▶ Statement Details							
2017	15488	\$17.70	\$0.00	\$0.00	\$0.00	\$17.70	\$0.00
▶ Statement Details							
2016	15522	\$17.70	\$0.00	\$0.00	\$0.00	\$17.70	\$0.00

## Values

## Taxing Jurisdiction

## Improvement / Building

## Sketch

## Property Image

## Land

## Roll Value History

## Deed and Sales History

## Payout Agreement

## **EXHIBIT E**

**COPY**



**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

April 25, 2017

Jayson Tymko  
President  
HiTest Sand, Inc.  
#1402 10035 Saskatchewan Drive  
Edmonton, Alberta  
Canada T6E 4R4

**Re: Letter of Intent to Sell 186.3 acres located south of Newport, WA**

Dear Mr. Tymko,

Consistent with the interest you conveyed during the meetings in Newport on April 11, 2017, this Letter of Intent outlines some of the major terms and conditions under which Public Utility District No. 1 of Pend Oreille County ("District") proposes to enter negotiations to sell the property described below to HiTest Sand, Inc., or at HiTest's election, Silica Investments, Inc. (collectively or in the alternative "Purchaser").

1. **Property:** Approximately 186.3 acres of vacant land located south of Newport, Washington, the "Property," which contains: (a) One parcel of 13.83 acres (Property ID # 19182) which is currently owned by Pend Oreille County, but is eligible to be surplused and conveyed to the District through intergovernmental transfer. It is anticipated that the intergovernmental transfer will take place prior to execution of the Purchase Agreement. In the event an intergovernmental transfer cannot be approved by Pend Oreille County, the District shall have no responsibility to acquire the 13.83 acres and there shall be no refund of the LOI Deposit; and (b) Three parcels owned by the District (Parcel # 19183) of 39.0 acres, (Parcel # 17036) of 80 acres, (Parcel #19193) of 53.47 acres. The District's parcels have been surplused.

2. **Purchase Price:** The purchase price for the Property shall be established by the appraisal commissioned by the District ("Purchase Price"). The Purchase Price will not account for customary prorations and adjustments made in commercial transactions, those will be in addition to the Purchase Price. The Purchase Price shall not be negotiable once established by the appraisal. The Purchase Price will be paid at or before closing by wire transfer in U.S. Dollars to escrow.

3. **As-Is:** Purchaser will accept the Property at Closing in its "as is" condition, without any representations or warranties whatsoever, except those conveyed through the special warranty deed.

4. **Due Diligence:** Purchaser will have one hundred and twenty (120) days after the Purchase Agreement (defined below) is fully executed and delivered to Buyer ("Due Diligence Period") to inspect and perform studies as may be reasonably necessary on and below the Property (including performance of environmental studies) at Purchaser's sole expense, to determine whether the Property is physically



April 25, 2017

Page -2-

suitable for Purchaser's intended use. If Purchaser is dissatisfied with the Property as a result of its inspections and studies then Purchaser would be entitled to terminate the Purchase Agreement by written notice delivered to District prior to the expiration of the Due Diligence Period.

Prior to performing any subsurface testing, drilling or excavation of the Property, Purchaser would obtain District's approval, which would not be unreasonably delayed or withheld. Purchaser will defend, indemnify and hold District harmless from losses and damages arising from inspection and testing of the Property. Purchaser would restore the Property to a condition reasonably similar to its condition prior to its testing and inspections.

The Due Diligence period shall not be extended. In the event Purchaser requests extension of the Due Diligence Period, it shall provide the District evidence of good cause for extension, at which time the District may, in its sole and unrestricted discretion, grant or deny the extension. The District may condition the grant of an extension on the payment of an additional non-refundable deposit(s).

5. **No Other Contingencies:** (a) The District understands from Purchaser's letter dated April 18, 2017, that it has reasonably satisfied itself that it can obtain the appropriate land use entitlements and permits, thus there shall be no land use contingency. (b) The District understands that Purchaser has immediately available to it the funds necessary to pay the Purchase Price at closing, thus there shall be no financing contingency.

6. **Deposits:** (a) In consideration for the District's good faith negotiation of the Purchase Agreement Purchaser shall pay to the District (by wire transfer or other method of payment approved by the District) a non-refundable deposit of \$25,000.00 (U.S. Dollars) upon mutual execution of this Letter of Intent ("LOI Deposit"). Upon closing the LOI Deposit shall be credited toward the Purchase Price. The LOI Deposit shall not be refunded, even if the parties do not sign a Purchase Agreement. (b) Purchaser shall deposit into escrow \$100,000.00 (U.S. Dollars) within three days after the Purchase Agreement is signed ("Earnest Money"). The Earnest Money shall become non-refundable on the sixtieth day after signing of the Purchase Agreement. The Earnest Money shall be credited toward the Purchase Price at closing. If the transaction fails to close the Earnest Money shall be promptly released to the District.

7. **Closing Date:** Closing would occur on or before September 1, 2017.

8. **Closing Costs:** District would pay for a standard policy of title insurance, any endorsements must be paid for by Purchaser. Escrow fees will be split 50:50, and any utilities, property taxes, or other expenses will be prorated at closing. Purchaser and District would each pay their own legal expenses. No real estate brokers have been engaged and thus no commission will be due or paid at the time of closing.

9. **Title:** Title would be conveyed by special warranty deed. The Purchase Agreement would contain commercially reasonable provisions conditioning Purchaser's obligation to close upon Purchaser's receipt of good and marketable title.

10. **Default:** If Purchaser fails to close after waiver of the Due Diligence Period for any reason, its Earnest Money Deposit shall be forfeited to the District. Purchaser shall not be entitled to set off or reimbursement for any inspections or studies performed during the Due Diligence Period.

11. **Purchase Agreement:** District and Purchaser plan to promptly negotiate in good faith the terms of a purchase and sale agreement ("Purchase Agreement") containing all essential terms and conditions of the transaction, including, but not limited to the terms and conditions set forth in this Letter of Intent. District

April 25, 2017

Page -3-

would provide Purchaser with a Purchase Agreement by no later than June 1, 2017. This Letter of Intent does not purport to include all essential terms of the transaction and, accordingly, except with respect to the LOI Deposit and the Confidentiality paragraph below, unless and until the Purchase Agreement has been executed and delivered by both parties, this Letter of Intent shall impose no legal obligation of any kind upon the parties. Purchaser and District may terminate discussions at any time for any reason.

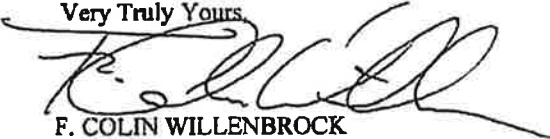
12. **Confidentiality:** District and Purchaser each covenants and agrees with the other that it will use its best efforts, acting in good faith, not to disclose or permit the disclosure of the existence or the terms of the Letter of Intent, or the transaction contemplated herein, to any other person, without the other party's consent; provided, however, Purchaser may disclose this Letter of Intent and the transactions contemplated herein to Purchaser's attorneys, consultants, or lender, or as required by law or by any governmental agency, or reasonably believed by Purchaser's attorneys to be required by law; and provided further that District may disclose this Letter of Intent and the transactions contemplated herein to District's attorneys, consultants or other agents or as required by law or by any governmental agency, or reasonably believed by District's attorney's to be required by law.

13. **Entire Agreement:** This Letter of Intent constitutes the entire understanding between the parties regarding the transaction, and all prior correspondence and discussions between the parties concerning the transaction are superseded by this Letter of Intent. Except that the parties acknowledge that the District has been asked to enter power services contract(s) to supply power to the Property for Purchaser's intended use. Both parties fully intend that contract(s) will be negotiated and agreed to in a timely fashion following closing, but that the District shall not enter into any power services contract while it is still the owner of the Property. Accordingly, the execution of a power services contract(s) shall not be a condition precedent to this transaction, nor shall the failure to enter such operate as a basis for reformation or rescission of the sale of the Property.

14. **Governing Law and Consent to Jurisdiction:** This Letter of Intent, the Purchase Agreement, and all subsequent contracts or agreements between the parties shall be governed by, constructed, and interpreted in accordance with the laws of the United States of America, and the state of Washington, as applied to contracts made and to be performed in the state of Washington. In the event any action is brought to enforce any of the provisions of this Letter of Intent, the Purchase Agreement, or any subsequent contract or agreement, each of the parties agree to be subject to the exclusive jurisdiction in a Superior Court of the state of Washington or the United States District Court in the state of Washington, and that the venue of any action shall lie in Pend Oreille County, Washington, or the Eastern District of Washington, respectively.

This Letter of intent shall expire at 5:00 p.m. (Pacific Time Zone time) on May 1, 2017, and shall be of no further force or effect.

Very Truly Yours,

  
F. COLIN WILLENBROCK  
General Manager

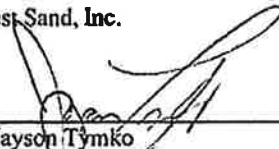
{signatures on following page}

April 25, 2017

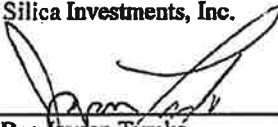
Page -4-

**Letter of Intent, dated April 25, 2017,  
Accepted By Purchaser.**

HiTest Sand, Inc.

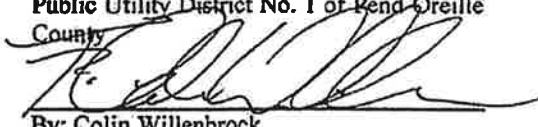
  
By: Jayson Tymko  
Its: President

Silica Investments, Inc.

  
By: Jayson Tymko  
Its: President

**District acknowledges acceptance of  
Letter of Intent, and receipt of LOI  
Deposit.**

Public Utility District No. 1 of Bend Oreille  
County

  
By: Colin Willenbrock  
Its: General Manager

## **EXHIBIT F**



## **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

June 13, 2017

COPY

Jayson Tymko  
President  
HiTest Sand, Inc.  
#1402 10035 Saskatchewan Drive  
Edmonton, Alberta  
Canada T6E 4R4

**Re: Revised Letter of Intent, dated April 25, 2017**

Dear Mr. Tymko:

This letter is to confirm your conversation with Kim Gentle regarding the Letter of Intent, dated April 25, 2017 ("Original LOI"). As was discussed there has been a change in circumstances regarding the scope of the Property, as defined in the Original LOI. This Revised Letter of Intent reflects the change in circumstances, but all other portions of the Original LOI not referenced below shall remain the same.

1. Property: Approximately 172.47 acres of vacant land located south of Newport, Washington, the "Property," which contains: Three parcels owned by the District (Parcel # 19183) of 39.0 acres, (Parcel # 17036) of 80 acres, (Parcel #19193) of 53.47 acres, which District has declared to be surplus property.

\*\*\*

4. Due Diligence: Purchaser will have one hundred and twenty (120) days after the Purchase Agreement (defined below) is fully executed and delivered to Buyer ("Due Diligence Period").

\*\*\*

7. Closing Date: Closing would occur on or before September 1, 2017.

\*\*\*

11. Purchase Agreement: District would provide Purchaser with a Purchase Agreement no later than June 16, 2017.

Page 2

The District will proceed to prepare the Purchase Agreement in accordance with these revisions unless Purchaser requests in writing further addition or revision to the Original LOI.

Very truly yours,

A handwritten signature in black ink, appearing to read 'F. Colin Willenbrock', written over a horizontal line.

F. COLIN WILLENBROCK  
General Manager

## **EXHIBIT G**



## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and among Public Utility District No. 1 of Pend Oreille County, a municipal corporation ("Seller"), whose address is P.O. Box 190, Newport, WA 99156, and HiTest Sand, Inc., a \_\_\_\_\_ corporation ("Purchaser"), whose address is #1402 10035 Saskatchewan Drive, Edmonton, Alberta, Canada T6E 4R4.

Seller is the owner of certain real property and desires to sell the property, and Purchaser desires to purchase the property, upon the terms and conditions specified below. For and in consideration of the Earnest Money, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual agreements between the parties contained herein, the parties hereto agree as follows:

**1. SALE OF PROPERTY.** Seller agrees to sell, and Purchaser agrees to purchase, that certain real property, including any existing improvements, appurtenances, easements, fixtures, hereditaments, privileges and rights thereto, commonly described as:

Government Lot 2 of Section 30, Township 31 North, Range 46 East of the Willamette Meridian; and the East half of the Northeast Quarter of Section 25, Township 31 North, Range 45 East of the Willamette Meridian, all in Pend Oreille County, Washington, together with all improvements thereon and any and all rights, easements and appurtenances thereto;

And

Government Lots 3 and 4 in Section 30, Township 31 North, Range 46 East of the Willamette Meridian, Pend Oreille County, Washington.

(hereinafter referred to as the "Property").

### **2. PURCHASE PRICE AND METHOD OF PAYMENT.**

2.1 Determination of Purchase Price. Seller agrees to sell the Property to Purchaser for the appraised value as determined by {appraiser TBD} ("Purchase Price"). The District shall provide a copy of the appraisal summary to Purchaser, such appraisal summary as it pertains to the Purchase Price shall be incorporated into this agreement by this reference, or through an addendum, either of which shall be sufficient to establish the Purchase Price without further negotiation of the parties.

2.2 Method of Payment. Purchaser shall pay to Seller the Purchase Price in U.S. Dollars, the Purchase Price, less any credits for Deposits, shall be made by wire transfer at least 24 hours prior to Closing.

2.3 Deposits. (a) In consideration for the District's good faith negotiation of the Purchase Agreement Purchaser has paid the District a non-refundable deposit of \$25,000.00 (U.S. Dollars) upon mutual execution of the Letter of Intent ("LOI Deposit"). Upon closing the LOI Deposit shall be credited toward the Purchase Price. The LOI Deposit shall not be refunded, even if this Agreement not accepted or is terminated. (b) Purchaser shall deposit with the Closing Agent \$100,000.00 (U.S. Dollars) within three days after this Agreement is signed ("Earnest Money"). The Earnest Money shall become non-refundable upon expiration of the Due Diligence Period. The Earnest Money shall be credited toward the Purchase Price at Closing. If the transaction fails to close the Earnest Money, plus any accrued interest, shall be promptly released to the District.

**3. FINANCING CONTINGENCY.** This Agreement is not contingent upon the ability of the Purchaser to secure financing.

**4. TITLE.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. Rights, reservations, federal patents, covenants, conditions and restrictions, presently of record, and easements and encroachments not materially affecting the value or unduly interfering with Purchaser's intended use of the Property, shall not be deemed to render title unmarketable. Building, use, or zoning restrictions, regulations, and provisions shall not be deemed encumbrances or be deemed to render title unmarketable for purposes of this Agreement. Encumbrances to be discharged by Seller shall be paid by Seller on or before Closing. Fee title to the Property shall be conveyed by Special Warranty Deed.

**5. TITLE INSURANCE.** Seller shall, within fourteen (14) days of the date hereof, obtain and submit to Purchaser, at the expense of Seller, an ALTA standard form commitment for title insurance from Frontier Title & Escrow Company, underwritten by First American Title Insurance Company in an amount not less than the Purchase Price. The cost and expense of the commitment for title insurance and the policy of title insurance shall be borne by Seller and paid at Closing from the proceeds of Seller. Purchaser may procure an extended coverage policy of title insurance and may increase the amount or scope of coverage of the insurance as desired and available upon payment at Closing of the additional premium occasioned thereby. The title policy shall contain no exceptions other than those contained in said standard form and those not inconsistent with this Agreement. If title is not insurable or marketable consistent with this Agreement, despite Seller's payment of monetary encumbrances and best efforts to correct title defects and make title so insurable or marketable prior to Closing, then Purchaser's sole election shall be either to waive such defects, or to terminate this Agreement. Nothing in this provision shall diminish or affect any covenants or warranties given in any deed or other conveyance at Closing.

**6. PURCHASER'S DUE DILIGENCE.** Commencing with the date of this Agreement, and for a period ending sixty (60) days later, or August 25, 2017, whichever is sooner (the "Due Diligence Period"), Purchaser shall have the right to enter upon the Property at mutually agreeable and reasonable times for the purpose of performing such examinations, inspections, investigations, surveys, analyses and tests as Purchaser may deem appropriate, including determining the feasibility of the Property for the use proposed by Purchaser and the environmental condition of the Property. Prior to performing any subsurface testing, drilling or excavation of the Property, Purchaser will obtain Seller's approval, which would not be unreasonably delayed or withheld. All examinations, inspections, investigations, surveys, analyses, tests, work or other performance undertaken by Purchaser shall be done at Purchaser's sole



expense and solely for Purchaser's benefit. Purchaser shall not be considered the agent of Seller for such purposes. Should this Agreement terminate Seller shall not be liable to Purchaser for any expense incurred by Purchaser during the Due Diligence Period.

6.1 Purchaser's inspection may not be used by Purchaser to introduce any matter other than a material condition or defect previously undisclosed to and unknown by Purchaser.

Purchaser's right to inspect and investigate the Property and verify items and conditions shall be conclusively deemed satisfied unless, fifteen days prior to expiration of the Due Diligence Period, Purchaser gives written notice to Seller of all material condition(s) and defect(s) which Purchaser determines are unsatisfactory. If Purchase gives notice of any unsatisfactory condition or defect Seller may elect, in its sole discretion, to cooperate with Purchaser to correct the condition or defect. Any agreement of the parties in regard to the correction must be in writing and signed by the parties. The Seller may condition its agreement to cooperate on the payment of an additional non-refundable deposit(s). If Seller does not agree to make any correction then Purchaser may either proceed to Closing or terminate this Agreement prior to expiration of the Due Diligence Period.

Failure of the Purchaser to terminate this Agreement prior to the expiration of the Due Diligence Period shall constitute Purchaser's acceptance of the Property in its "as-is", "where-is," "with all faults" condition and the Earnest Money shall become non-refundable. This provision shall survive closing.

6.2 The Due Diligence period shall not be extended. In the event Purchaser requests extension of the Due Diligence Period, it shall provide the Seller evidence of good cause for extension, at which time the Seller may, in its sole and unrestricted discretion, grant or deny the extension. The Seller may condition the grant of an extension on the payment of an additional non-refundable deposit(s).

6.3 By closing this transaction, Purchaser specifically acknowledges that Purchaser has observed and investigated the Property and has reached Purchaser's own conclusions as to the adequacy, acceptability, and suitability of the Property and surrounding area, and the feasibility and desirability of acquiring the Property for Purchaser's intended use, based solely on Purchaser's examination. Purchaser agrees that no information provided from or through Seller affecting the Property constitutes a representation of fact, and Purchaser is to independently verify all such information, including but not limited to the following: zoning, use and proposed changes in zoning or use of the Property and vicinity; taxation rate and tax classification of the Property (including existence of any special use classification); covenants and restrictions; utility districts; anticipated or proposed utility, septic, sewer installation or improvement assessments and charges; school districts and their school names and locations; public or private nature of roads serving the Property and by whom maintained; corners, boundary line locations, size, square footage and dimensions of the Property and any improvements; or existence of termites and pests.

6.4 Purchaser shall hold harmless, indemnify and defend Seller against any and all claims, causes, damages, injury to person or property, liens, liability, and related expenses arising out of or related to any of the activities of the Purchaser on the Property, including but not limited to the inspection of the Property by Purchaser or Purchaser's employees, agents or contractors, and including but not limited to any environmental inspections, tests, or other examinations. In the event this transaction fails to Close for any reason and Purchaser has disrupted or altered the Property in any respect, Purchaser shall

immediately restore the Property as nearly as practicable to the condition it was in prior to Purchaser's commencement of such inspections, tests, work or other performance.

## **7. "AS IS/WHERE IS" SALE.**

7.1 Seller makes no representations or warranties of any kind whatsoever to Purchaser, except as expressly set forth in this Agreement. Without limitation to the generality of the foregoing, Purchaser acknowledges and agrees as follows:

- 7.1.1 That the Property is to be conveyed by Seller to Purchaser in "AS IS/WHERE IS" condition, with any and all faults;
- 7.1.2 That except as specifically set forth in this Agreement, the Seller has not made, does not hereby make, and shall not make and expressly disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or nature whatsoever, whether express or implied, oral or written, past or present, of, as to, concerning or with respect to the Property, including, without limiting the generality of the foregoing, the following: (1) the nature, quality or condition of the soil, water (if any) or geology of the Property, (2) existing conditions of the Property for any particular purpose of development potential, (3) any income to be derived from the Property, (4) the suitability of the Property for any and all activities and uses which Purchaser or any other party may conduct thereon, (5) the compliance of the Property with any laws, rules, ordinances, covenants, conditions or restrictions of any governmental authority or any other person, (6) the habitability, merchantability or fitness of the Property for any purpose, (7) whether or not any underground storage tanks are or were located on, in or under the Property or any adjacent or other properties, (8) the design of any improvements located on the Property, (9) the nature or quality of construction, structural design, and/or engineering of such improvements, (10) the quality of labor and/or materials (including the composition thereof) used in such improvements, (11) the condition of the Property with respect to any materials or substances which may now or hereafter be considered by any governmental authority or any other person to be dangerous, explosive, flammable, infectious or otherwise hazardous, and/or (12) any other matters with respect to the Property. The disclaimer made in subsection (11) above includes, without limitation any representations or warranties with respect to solid waste, as defined by the United States Environmental Protection Agency regulations at 40 CFR Part 261 and/or the disposal of solid waste; and the existence of any hazardous substance as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder, as well as any comparable state or local laws, ordinances, rules or regulations.

7.2 Purchaser hereby acknowledges and agrees that Purchaser has the opportunity to inspect the Property as Purchaser sees fit, and Purchaser shall rely solely on such investigations and not on any other information furnished by Seller in making Purchaser's decision to purchase or not purchase the Property. Purchaser further acknowledges and agrees that any information concerning the Property furnished by



Seller was obtained from a variety of sources and that Seller did not and is not required to make any independent investigation or verification of any such information with respect to accuracy, completeness or any other matter, and Seller expressly disclaims any representations and warranties with respect to such matters except as otherwise explicitly set forth in this Agreement.

7.3 Except for such rights of Purchaser as result from Seller's contractual obligations hereunder, from and after the Closing, Purchaser hereby assumes all risks associated with ownership of the Property and any defects that may be located thereon or associated therewith of any type or nature whatsoever, and Purchaser shall be solely responsible for and shall indemnify, protect, defend and hold Seller harmless from, all costs (including attorneys' fees and court costs), expenses and all other claims, demands, costs, expenses, causes of action or other matters incurred in or associated with such ownership and with the presence, removal or repair of any such defect; provided, however, the indemnity of Purchaser as set forth in this Section shall not extend to any third party claims brought directly against Seller as a result of an event which occurred prior to Closing.

7.4 Purchaser acknowledges and agrees that the unconditional "as-is" nature of this transaction is a material inducement to Seller to enter into this Agreement and to sell the Property to Purchaser at the Purchase Price and upon the other terms and conditions set forth herein. As further consideration and material inducement to Seller, Purchaser, on behalf of its principals, agents, successors and assigns, and except as otherwise explicitly set forth in this Agreement, forever releases and discharges Seller and Seller's officers, directors, shareholders, principals, agents, successors and assigns, from and against all claims, causes of action, losses, costs, damages, liabilities, and expenses of any kind which Purchaser may now or at any time hereafter incur or realize in any manner from the Property, this Agreement, and/or any matter arising therefrom or from the transactions contemplated by this Agreement.

**8. CLOSING AND POSSESSION:** Upon demand, Purchaser and Seller will promptly deposit with Frontier Title & Escrow Company, whose address is 121 N. Washington Ave., Newport, Washington, 99156 (the "Closing Agent"), all instruments and monies required to complete the transaction in accordance with this Agreement. The sale shall close on or before September 1, 2017 (the "Closing"), which shall be the time when all appropriate documents have been recorded and sale proceeds, if any, are available for disbursement to Seller. In the event the transaction cannot close by the date specified due to an occurrence that may be remedied within a reasonable period of time, the parties may agree to extend Closing for a reasonable period of time and/or the period of time necessary to remedy the delaying occurrence, such extension must be in writing signed by the parties. Closing shall not, however, be extended beyond September 29, 2017 (the "Termination Date"), unless extension beyond this date is agreed to by the parties in writing. Purchaser shall be entitled to physical possession of the Property on Closing.

**9. CLOSING COSTS AND PRORATIONS:** The Closing Agent's fees and other closing fees and costs shall be shared equally between Purchaser and Seller, unless limited by law or regulation. Seller shall pay any real estate excise tax. Taxes for the current year, if any, rent, interest, insurance, and water and other utility charges or assessments constituting liens shall be prorated as of Closing.

**10. MATERIAL ALTERATION AND CASUALTY LOSSES:** Seller shall use best efforts to maintain the Property in its present condition until Purchaser is entitled to possession, but shall have no

obligation to restore or repair any damage unless intentionally caused by Seller. If improvements on the Property, including timber or crops included in the sale, are destroyed or materially damaged by fire or other accidental casualty prior to Closing, or if Seller permits material adverse changes to occur in the Property for other reasons prior to change of possession, then Purchaser may elect to terminate this Agreement.

**11. DEFAULT/TERMINATION:** The sole remedy for breach of this Agreement shall be termination, and all Deposits shall be released by Closing Agent to Seller, except that Closing Agent may deduct from the Deposit any costs or expenses it has incurred prior to termination.

Seller	Purchaser
_____	_____
_____	_____

**12. ASSIGNMENT:** Purchaser's rights or interests under this Agreement may not be assigned by Purchaser without Seller's prior written consent, which consent is in Seller's sole and absolute discretion.

**13. NOTICES.** All notices or other communications which may be made pursuant to or which may be necessary or convenient in connection with this Agreement shall be in writing and shall be made to the parties to this Agreement at the addresses that appear after each party's name above (or at such address as each may by written notice to the other designate) by personal service or by regular, certified or registered mail. In the case of mailing, the weekday (except legal holidays) after the date of mailing shall be deemed the date of delivery. Notices may also be delivered by email, and shall be deemed delivered the day it was sent if received before 5:00 p.m. Pacific Time on a weekday, otherwise it will be deemed delivered the next weekday (except legal holidays).

**14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties hereto and no representation, inducement, promise or agreement, oral or written, between the parties hereto which is not embodied herein shall be of any force or effect. This Agreement shall also supersede any prior agreements between the parties concerning the Property.

**15. AMENDMENTS.** No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing and signed by all parties with the same formality as this Agreement is executed.

**16. SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, executors, administrators, successors, assigns and the legal representatives of their estates.

**17. NO WAIVER OF RIGHTS.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.



**18. GOVERNING LAW AND CONSENT TO JURISDICTION:** This Agreement, and all subsequent contracts or agreements between the parties shall be governed by, constructed, and interpreted in accordance with the laws of the United States of America, and the state of Washington, as applied to contracts made and to be performed in the state of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, or any subsequent contract or agreement, each of the parties agree to be subject to the exclusive jurisdiction in a Superior Court of the state of Washington or the United States District Court in the state of Washington, and that the venue of any action shall lie in Pend Oreille County, Washington, or the Eastern District of Washington, respectively.

**19. 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.

**20. COUNTERPARTS.** Email transmission of any signed original document, and retransmission of any signed emailed transmission shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm email transmitted signatures by signing an original document. This Agreement may be signed in counterparts.

**21. TIME IS OF THE ESSENCE.** Time is of the essence as to all terms and conditions of this Agreement.

**22. ATTORNEYS' FEES.** If Purchaser, Seller, or any real estate licensee or broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, each prevailing party shall recover their reasonable attorneys' fees. This provision shall survive Closing.

**23. CONFIDENTIALITY:** Seller and Purchaser each covenants and agrees with the other that it will use its best efforts, acting in good faith, not to disclose or permit the disclosure of the existence or the terms of the transaction contemplated herein, to any other person, without the other party's consent. Provided, however, Purchaser may disclose this transaction to Purchaser's attorneys, consultants, or lender, or as required by law or by any governmental agency, or reasonably believed by Purchaser's attorneys to be required by law; and provided further that Seller may disclose the transaction contemplated herein to Seller's attorneys, consultants or other agents or as required by law or by any governmental agency, or reasonably believed by Seller's attorneys to be required by law.

**Purchaser:**

HiTest Sand, Inc.

---

By: Jayson Tymko  
Its: President

Silica Investments, Inc.

---

By: Jayson Tymko  
Its: President

**Seller:**

Public Utility District No. 1 of Pend Oreille  
County

---

By: Colin Willenbrock  
Its: General Manager

DRAFT



## **EXHIBIT H**

Minutes of  
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY  
August 1, 2017  
NEWPORT CONFERENCE ROOM, NEWPORT, WA

Present: Daniel L. Peterson, President  
Curtis J. Knapp, Vice President  
Richard A. Larson, Secretary

Staff Present: F. Colin Willenbrock, General Manager  
Management/District Staff  
Tyler R. Whitney, Winston & Cashatt Lawyers, via teleconference  
Karen Willner, Clerk of the Board

Others: Jared Horton, Real Life Ministries

The meeting was called to order at 8:30 a.m. by Daniel L. Peterson, President.

CONSENT AGENDA:

The minutes from the July 25, 2017 meeting and today's revised agenda were reviewed.

Vouchers audited certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been made available to the Board. As of this date, August 1, 2017, the Board, upon motion by Commissioner Larson and seconded by Commissioner Knapp approved the following:

- The minutes of July 25, 2017 and the revised agenda for August 1, 2017.
- Payment of those vouchers, included in the list referred to above and further described as follows: Bank of America Voucher Nos. 95443 through 95444 in the total amount of \$166,615.85; ACH payments in the total amount of \$8,927.57; and Wire Transfers in the total amount of \$10,890.00.
- Payment of those vouchers, included in the list referred to above and further described as follows: Umpqua Bank Voucher Nos. 4 through 41 in the total amount of \$34,453.84; ACH payments in the total amount of \$505,691.08; and Wire Transfers in the total amount of \$196,218.83.

BUSINESS FROM THE PUBLIC:

Jared Horton, Real Life Ministries appeared before the Board to personally thank them for their donation to the Happy Feet Capital Campaign. Commissioner Larson commended Mr. Horton for taking the time to personally appear before the Board and thanking them. Mr. Horton left the meeting.

F. Colin Willenbrock, District General Manager reported on a call he had with Don Gronning, Newport Miner regarding today's HiTest topic. Discussion was held.

Sarah Holderman, District Treasurer introduced Libbey Bartel as the District's new Customer Service Manager and reported that yesterday was her first day at the District. Ms. Bartel provided her background history. The Board congratulated her and welcomed her to the District.

SILVER CERTIFICATE OF ACHIEVEMENT AWARD FOR METALINE FALLS WATER SYSTEM:

Mark Scott, District Water Systems Manager distributed and explained a handout on the Treatment Optimization Program. He reviewed the optimized performance water plant filtration standards. He reported the District has been awarded a first time Silver Certificate of Achievement Award for the Metaline Falls Water System. The Riverbend

Water System was also awarded with a Silver Certificate Achievement Award for their eighth year in a row.

Mr. Willenbrock and the Board commended and congratulated Mr. Scott and his staff for doing great work on improving the performance of the water treatment facilities.

Mr. Scott reported the District has had five candidate interviews for the vacant water system operator job position. There are two remaining interviews this week. Discussion was held.

#### ACTION ITEM:

- Declaration of Surplus Property – Fleet Vehicle #801. Mark Cauchy, District Director, Regulatory & Environmental Affairs provided the details. Based on staff recommendation, a motion was made by Commissioner Knapp and seconded by Commissioner Larson to declare the fleet vehicle #801 as being no longer necessary, material to, or useful in the operations of the District and, therefore, surplus to the needs of the District. The motion passed unanimously. The staff will proceed as appropriate.

Mr. Willenbrock reported that he and Chris Jones, District Director, Operations/Superintendent are working on a District fleet management plan. Discussion was held.

#### BOARD WORKSHOP/GENERAL MANAGER'S REPORT:

##### F. Colin Willenbrock, General Manager:

- He reported the Washington Public Utility Districts Association (WPUDA) will be doing a Community Cares auction and is requesting donations for items. Discussion was held. He and Karen Willner, Clerk of the Board will work on getting some auction items.
- He reported the District will have a booth at this year's Pend Oreille County Fair and Ms. Willner is working on the District's display.
- He provided a J.W. Fowler Company update and reported there is a meeting today to check on the progress of the Box Canyon Upstream Fish Passage. He explained staff is trying to keep the water level down so that the project can continue. October 2018 is the project completion deadline mandated by the Federal Energy Regulatory Commission. Discussion was held.
- He distributed and reviewed a blog article regarding HiTest Sands, Inc. coming to Newport. Discussion was held.

#### SAFETY SPOTLIGHT:

Discussion was held regarding the objections to safety such as safety takes time and slows you down; importance of thinking twice before doing something unsafe; and the hoot owl one shot going into effect to minimize employees working in the field to heat exposure.

#### CUSTOMER SPOTLIGHT:

Discussion was held regarding an update on a customer email about a fiber easement.

#### COMMISSION REPORT:

Commissioner Knapp attended an Energy Northwest meeting on July 26 – 27 in Pasco and provided an overview.

#### COMMISSION BUSINESS:

Commissioner Peterson will attend a Public Power Council meeting on August 2 – 3 in Portland.

Discussion was held regarding scheduling a legislative luncheon in October and an upcoming tour of Pend Oreille County.

Following a 5-minute break, the meeting resumed.

AVISTA BALANCING AUTHORITY SERVICES DISCUSSION:

Kim Gentle, District Director, Power & Risk Management provided a powerpoint presentation on the Avista Balancing Authority Services. She explained who Avista is, how power is supplied, what a balancing authority is, who else can provide these services, why the District uses Avista, and who pays for the services. Discussion was held.

Mr. Willenbrock commended Ms. Gentle and her staff for doing a great job with this process.

Amber Orr, District Engineering Manager provided an update on the Bonneville Power Administration Transmission Operator Services. Discussion was held.

BREAK/BUSINESS FROM THE PUBLIC:

Following a 5-minute break and no business from the public, the meeting resumed.

HITEST SANDS, INC. DISCUSSION:

Ms. Gentle provided an overview of the District's surplus land that HiTest Sands, Inc. is inquiring about. The total land consists of 187 acres and was purchased for \$500,000 as a site to build gas turbine peakers. She explained the land is currently zoned as government and that if HiTest purchases the land, they will be responsible to change the zoning to industrial.

Mr. Willenbrock reported the land was surplus and advertised but no bids were received. Discussion was held.

EXECUTIVE SESSION – PENDING AND/OR POTENTIAL LITIGATION:

A 45-minute executive session on pending and/or potential litigation commenced at 10:55 a.m. The following were in attendance: Board of Commissioners; F. Colin Willenbrock, General Manager; April Owen, Director, Finance/Auditor; Kim Gentle, Director, Power & Risk Management; and Tyler R. Whitney, Winston & Cashatt Lawyers, via teleconference. The executive session adjourned at 11:30 a.m. and the Board returned to open session. No final action was taken.


EXECUTIVE SESSION – PERSONNEL:

A 30-minute executive session on pending and/or potential litigation commenced at 11:35 a.m. The following were in attendance: Board of Commissioners; and F. Colin Willenbrock, General Manager. The executive session adjourned at 12:02 p.m. and the Board returned to open session. No final action was taken.

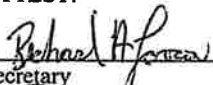
ACTION ITEM:

- Resolution No. 1399 – PUD Lands Sale to HiTest Sands, Inc. A motion was made by Commissioner Knapp and seconded by Commissioner Larson to adopt the resolution. The motion passed unanimously.

There being no further discussion to come before the Board, the meeting adjourned at 12:30 p.m.

  
\_\_\_\_\_  
President

ATTEST:

  
Secretary

  
General Counsel

Approved as to Form

## **EXHIBIT I**

RESOLUTION NO. 1399

A RESOLUTION OF PUBLIC UTILITY DISTRICT NO. 1 OF  
PEND OREILLE COUNTY FOR SALE OF DISTRICT LANDS TO  
HITEST SANDS, INC.

WHEREAS, Public Utility District No. 1 of Pend Oreille County ("District")  
surplused District lands with Parcel numbers 17036, 19183 and 19193 on March 15,  
2016; and

WHEREAS, the District advertised the surplus lands for sale on August 31,  
2016 and September 7, 2016; and

WHEREAS, the District did not receive any bids for purchase; and

WHEREAS, the District received inquiry and request for electric service from  
HiTest Sands, Inc. on April 18, 2017; and

WHEREAS, the District signed a tentative Letter of Intent and received earnest  
money from HiTest Sands, Inc. on April 25, 2017; and

WHEREAS, the District signed a revised Letter of Intent on June 13, 2017; and

WHEREAS, the District sent a draft Purchase Agreement to HiTest Sands, Inc. on  
June 16, 2017; and


WHEREAS, the District received authorization to purchase Pend Oreille County  
land Parcel number 19182 at the tax assessed value on June 20, 2017; and

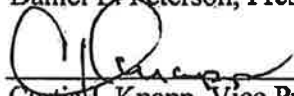
WHEREAS, the District now intends to sell the entire four parcel package  
following final appraisal and due diligence to HiTest Sands, Inc.;


NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of  
Public Utility District No. 1 to authorize the general manager to independently negotiate  
the final sale of Parcel numbers 17036, 19182, 19183 and 19193 for not less than the  
appraised value to HiTest Sands, Inc.

UNANIMOUSLY ADOPTED this 1st day of August, 2017.

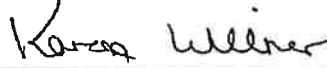
BOARD OF COMMISSIONERS  
PUBLIC UTILITY DISTRICT NO. 1  
PEND OREILLE COUNTY, WASHINGTON

By   
Daniel L. Peterson, President

By   
Curtis J. Knapp, Vice President

By   
Richard A. Larson, Secretary

ATTEST:

  
Clerk of the Board



## **EXHIBIT J**



## **EXHIBIT K**



**Valbridge**  
PROPERTY ADVISORS

## Appraisal Report

Pend Oreille PUD Property  
500 Block of N. Stateline Road  
Newport, Pend Oreille County, Washington 99156

Report Date: August 4, 2017



FOR:

Public Utility District No. 1 of Pend Oreille County  
Ms. Kimberly Gentle  
P.O. Box 190/130 N. Washington Avenue  
Newport, Washington 99156

**Valbridge Property Advisors |  
Auble, Jolicoeur and Gentry, Inc.**

1875 N. Lakewood Drive, Suite 100  
Coeur d'Alene, ID 83814  
208-292-2965 phone  
208-292-2971 fax  
[valbridge.com](http://valbridge.com)

Valbridge Job Number:  
ID01-17-0148-000



**Valbridge**

PROPERTY ADVISORS

Auble, Jolicoeur & Gentry, Inc.

1875 N. Lakewood Drive, Suite 100

Coeur d'Alene, ID 83814

208-292-2965 phone

208-292-2971 fax

valbridge.com

**August 4, 2017**

Vicki K. Mundlin, MAI

208-292-2965

vmundlin@valbridge.com

Ms. Kimberly Gentle

Public Utility District No. 1 of Pend Oreille County

P.O. Box 190/130 N. Washington Avenue

Newport, Washington 99156

RE: Appraisal Report  
Pend Oreille PUD Property  
500 Block of N. Stateline Road  
Newport, Pend Oreille County, Washington 99156

Dear Ms. Gentle:

At your request, I have appraised the above-referenced property to form an opinion of the Market Value of the Fee Simple Interest as of July 12, 2017. I inspected the property that is the subject of this appraisal and report on July 12, 2017. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to my value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The subject property, as referenced above, is a 186.30-acre site located in southwest Pend Oreille County and is further identified as Assessor's Parcel Numbers (APNs) 463130010001, 463130020001, 463130500001 and 453125000005. The property is a rectangular site that is primarily cut over timberland, and has gentle to moderate slopes with some scattered rock outcrops. It has access by a 20' wide recorded easement across the adjacent property to the west. The easement access is a narrow, rough dirt road.

It is noted that although the Assessor's office describes the address as being on Stateline Road this road is not improved, and in fact does not appear to be a dedicated right-of-way, as it bounds the subject property on the east.

I developed my analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of my client as I understand them.

The client in this assignment is Public Utility District No. 1 of Pend Oreille County and the intended users of this report are you and representatives from HiTest Sand Inc. and no others. The intended use is to negotiate the potential sale of the property to HiTest Sand, Inc. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.



The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumption and hypothetical condition which might have affected the assignment results:

#### Extraordinary Assumptions

- The subject is appraised under the extraordinary assumption that the county will work with the PUD and the prospective buyer to provide road access to the site, and that the Pend Oreille County PUD will provide power lines at locations to be determined later.

#### Hypothetical Conditions

- The subject is appraised under the hypothetical condition that it is zoned Rural 40 (R-40).

Based on the analysis contained in the following report, my value conclusions are summarized as follows:

Value Conclusions	
Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	July 12, 2017
<b>Value Conclusion</b>	<b>\$250,000</b>

Respectfully submitted,  
Valbridge Property Advisors | Auble, Jolicoeur and Gentry, Inc.

Vicki K. Mundlin, MAI  
Senior Managing Director  
Certified General Real Estate Appraiser  
Washington State License #1100856  
vmundlin@valbridge.com

## **EXHIBIT L**



COPY

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this 21st day of August 2017, by and among Public Utility District No. 1 of Pend Oreille County, a municipal corporation ("Seller"), whose address is P.O. Box 190, Newport, WA 99156, and HiTest Sand, Inc., a Canadian corporation ("Purchaser"), whose address is Centre 104, 5241 Calgary Trail, Unit 601, Edmonton, Alberta, T6H 5X6.

Seller is the owner of certain real property and desires to sell the property, and Purchaser desires to purchase the property, upon the terms and conditions specified below. For and in consideration of the Earnest Money, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual agreements between the parties contained herein, the parties hereto agree as follows:

**1. SALE OF PROPERTY.** Seller agrees to sell, and Purchaser agrees to purchase, that certain real property, including any existing improvements, appurtenances, easements, fixtures, hereditaments, privileges and rights thereto, commonly described as:

Government Lot 2 of Section 30, Township 31 North, Range 46 East of the Willamette Meridian; and the East half of the Northeast Quarter of Section 25, Township 31 North, Range 45 East of the Willamette Meridian, all in Pend Oreille County, Washington, together with all improvements thereon and any and all rights, easements and appurtenances thereto;

And

Government Lots 3 and 4 in Section 30, Township 31 North, Range 46 East of the Willamette Meridian, Pend Oreille County, Washington.

And

Government Lot 1, Section 30, Township 31 North, Range 46 East of the Willamette Meridian, Pend Oreille County, Washington.

(hereinafter referred to as the "Property").

## 2. PURCHASE PRICE AND METHOD OF PAYMENT

2.1 Determination of Purchase Price. Seller agrees to sell the Property to Purchaser for Three Hundred Thousand and 00/100 U.S. Dollars (\$ 300,000.00) ("Purchase Price").

2.2 Method of Payment. Purchaser shall pay to Seller the Purchase Price in U.S. Dollars, the Purchase Price, less any credits for Deposits, shall be made by wire transfer at least 24 hours prior to Closing.



2.3 Deposits. (a) In consideration for the District's good faith negotiation of the Purchase Agreement Purchaser has paid the District a non-refundable deposit of \$25,000.00 (U.S. Dollars) upon mutual execution of the Letter of Intent ("LOI Deposit"). Upon closing the LOI Deposit shall be credited toward the Purchase Price. The LOI Deposit shall not be refunded, even if this Agreement is not accepted or is terminated. (b) Purchaser shall deposit with the Closing Agent \$100,000.00 (U.S. Dollars) within three days after this Agreement is signed ("Earnest Money"). The Earnest Money shall become non-refundable upon expiration of the Due Diligence Period. The Earnest Money shall be credited toward the Purchase Price at Closing. If the transaction fails to close the Earnest Money, plus any accrued interest, shall be promptly released to the District.

**3 FINANCING CONTINGENCY.** This Agreement is not contingent upon the ability of the Purchaser to secure financing.

**4 TITLE.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. Rights, reservations, federal patents, covenants, conditions and restrictions, presently of record, and easements and encroachments not materially affecting the value or unduly interfering with Purchaser's intended use of the Property, shall not be deemed to render title unmarketable. Building, use, or zoning restrictions, regulations, and provisions shall not be deemed encumbrances or be deemed to render title unmarketable for purposes of this Agreement. Encumbrances to be discharged by Seller shall be paid by Seller on or before Closing. Fee title to the Property shall be conveyed by Special Warranty Deed.

**5 TITLE INSURANCE.** Seller shall, within fourteen (14) days of the date hereof, obtain and submit to Purchaser, at the expense of Seller, an ALTA standard form commitment for title insurance from Frontier Title & Escrow Company, underwritten by First American Title Insurance Company in an amount not less than the Purchase Price. The cost and expense of the commitment for title insurance and the policy of title insurance shall be borne by Seller and paid at Closing from the proceeds of Seller. Purchaser may procure an extended coverage policy of title insurance and may increase the amount or scope of coverage of the insurance as desired and available upon payment at Closing of the additional premium occasioned thereby. The title policy shall contain no exceptions other than those contained in said standard form and those not inconsistent with this Agreement. If title is not insurable or marketable consistent with this Agreement, despite Seller's payment of monetary encumbrances and best efforts to correct title defects and make title so insurable or marketable prior to Closing, then Purchaser's sole election shall be either to waive such defects, or to terminate this Agreement. Nothing in this provision shall diminish or affect any covenants or warranties given in any deed or other conveyance at Closing.

**6 PURCHASER'S DUE DILIGENCE.** Commencing with the date of this Agreement, and for a period ending August 25, 2017, whichever is sooner (the "Due Diligence Period"), Purchaser shall have the right to enter upon the Property at mutually agreeable and reasonable times for the purpose of performing such examinations, inspections, investigations, surveys, analyses and tests as Purchaser may deem appropriate, including determining the feasibility of the Property for the use proposed by Purchaser and the environmental condition of the Property. Prior to performing any subsurface testing, drilling or excavation of the Property, Purchaser will obtain Seller's approval, which would not be unreasonably delayed or withheld. All examinations, inspections, investigations, surveys, analyses, tests, work or other performance undertaken by Purchaser shall be done at Purchaser's sole expense and solely for

Purchaser's benefit. Purchaser shall not be considered the agent of Seller for such purposes. Should this Agreement terminate Seller shall not be liable to Purchaser for any expense incurred by Purchaser during the Due Diligence Period.

6.1 Purchaser's inspection may not be used by Purchaser to introduce any matter other than a material condition or defect previously undisclosed to and unknown by Purchaser.

Purchaser's right to inspect and investigate the Property and verify items and conditions shall be conclusively deemed satisfied unless, fifteen days prior to expiration of the Due Diligence Period, Purchaser gives written notice to Seller of all material condition(s) and defect(s) which Purchaser determines are unsatisfactory. If Purchase gives notice of any unsatisfactory condition or defect Seller may elect, in its sole discretion, to cooperate with Purchaser to correct the condition or defect. Any agreement of the parties in regard to the correction must be in writing and signed by the parties. The Seller may condition its agreement to cooperate on the payment of an additional non-refundable deposit(s). If Seller does not agree to make any correction then Purchaser may either proceed to Closing or terminate this Agreement prior to expiration of the Due Diligence Period.

Failure of the Purchaser to terminate this Agreement prior to the expiration of the Due Diligence Period shall constitute Purchaser's acceptance of the Property in its "as-is", "where-is," "with all faults" condition and the Earnest Money shall become non-refundable. This provision shall survive closing.

6.2 The Due Diligence period shall not be extended. In the event Purchaser requests extension of the Due Diligence Period, it shall provide the Seller evidence of good cause for extension, at which time the Seller may, in its sole and unrestricted discretion, grant or deny the extension. The Seller may condition the grant of an extension on the payment of an additional non-refundable deposit(s).

6.3 By closing this transaction, Purchaser specifically acknowledges that Purchaser has observed and investigated the Property and has reached Purchaser's own conclusions as to the adequacy, acceptability, and suitability of the Property and surrounding area, and the feasibility and desirability of acquiring the Property for Purchaser's intended use, based solely on Purchaser's examination. Purchaser agrees that no information provided from or through Seller affecting the Property constitutes a representation of fact, and Purchaser is to independently verify all such information, including but not limited to the following: zoning, use and proposed changes in zoning or use of the Property and vicinity; taxation rate and tax classification of the Property (including existence of any special use classification); covenants and restrictions; utility districts; anticipated or proposed utility, septic, sewer installation or improvement assessments and charges; school districts and their school names and locations; public or private nature of roads serving the Property and by whom maintained; corners, boundary line locations, size, square footage and dimensions of the Property and any improvements; or existence of termites and pests.

6.4 Purchaser shall hold harmless, indemnify and defend Seller against any and all claims, causes, damages, injury to person or property, liens, liability, and related expenses arising out of or related to any of the activities of the Purchaser on the Property, including but not limited to the inspection of the Property by Purchaser or Purchaser's employees, agents or contractors, and including but not limited to any environmental inspections, tests, or other examinations. In the event this transaction fails to Close for any reason and Purchaser has disrupted or altered the Property in any respect, Purchaser shall

immediately restore the Property as nearly as practicable to the condition it was in prior to Purchaser's commencement of such inspections, tests, work or other performance.

## **7. "AS IS/WHERE IS" SALE.**

7.1 Seller makes no representations or warranties of any kind whatsoever to Purchaser, except as expressly set forth in this Agreement. Without limitation to the generality of the foregoing, Purchaser acknowledges and agrees as follows:

7.1.1 That the Property is to be conveyed by Seller to Purchaser in "AS IS/WHERE IS" condition, with any and all faults;

7.1.2 That except as specifically set forth in this Agreement, the Seller has not made, does not hereby make, and shall not make and expressly disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or nature whatsoever, whether express or implied, oral or written, past or present, of, as to, concerning or with respect to the Property, including, without limiting the generality of the foregoing, the following: (1) the nature, quality or condition of the soil, water (if any) or geology of the Property, (2) existing conditions of the Property for any particular purpose of development potential, (3) any income to be derived from the Property, (4) the suitability of the Property for any and all activities and uses which Purchaser or any other party may conduct thereon, (5) the compliance of the Property with any laws, rules, ordinances, covenants, conditions or restrictions of any governmental authority or any other person, (6) the habitability, merchantability or fitness of the Property for any purpose, (7) whether or not any underground storage tanks are or were located on, in or under the Property or any adjacent or other properties, (8) the design of any improvements located on the Property, (9) the nature or quality of construction, structural design, and/or engineering of such improvements, (10) the quality of labor and/or materials (including the composition thereof) used in such improvements, (11) the condition of the Property with respect to any materials or substances which may now or hereafter be considered by any governmental authority or any other person to be dangerous, explosive, flammable, infectious or otherwise hazardous, and/or (12) any other matters with respect to the Property. The disclaimer made in subsection (11) above includes, without limitation any representations or warranties with respect to solid waste, as defined by the United States Environmental Protection Agency regulations at 40 CFR Part 261 and/or the disposal of solid waste; and the existence of any hazardous substance as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder, as well as any comparable state or local laws, ordinances, rules or regulations.

7.2 Purchaser hereby acknowledges and agrees that Purchaser has the opportunity to inspect the Property as Purchaser sees fit, and Purchaser shall rely solely on such investigations and not on any other information furnished by Seller in making Purchaser's decision to purchase or not purchase the Property. Purchaser further acknowledges and agrees that any information concerning the Property furnished by

Seller was obtained from a variety of sources and that Seller did not and is not required to make any independent investigation or verification of any such information with respect to accuracy, completeness or any other matter, and Seller expressly disclaims any representations and warranties with respect to such matters except as otherwise explicitly set forth in this Agreement.

7.3 Except for such rights of Purchaser as result from Seller's contractual obligations hereunder, from and after the Closing, Purchaser hereby assumes all risks associated with ownership of the Property and any defects that may be located thereon or associated therewith of any type or nature whatsoever, and Purchaser shall be solely responsible for and shall indemnify, protect, defend and hold Seller harmless from, all costs (including attorneys' fees and court costs), expenses and all other claims, demands, costs, expenses, causes of action or other matters incurred in or associated with such ownership and with the presence, removal or repair of any such defect; provided, however, the indemnity of Purchaser as set forth in this Section shall not extend to any third party claims brought directly against Seller as a result of an event which occurred prior to Closing.

7.4 Purchaser acknowledges and agrees that the unconditional "as-is" nature of this transaction is a material inducement to Seller to enter into this Agreement and to sell the Property to Purchaser at the Purchase Price and upon the other terms and conditions set forth herein. As further consideration and material inducement to Seller, Purchaser, on behalf of its principals, agents, successors and assigns, and except as otherwise explicitly set forth in this Agreement, forever releases and discharges Seller and Seller's officers, directors, shareholders, principals, agents, successors and assigns, from and against all claims, causes of action, losses, costs, damages, liabilities, and expenses of any kind which Purchaser may now or at any time hereafter incur or realize in any manner from the Property, this Agreement, and/or any matter arising therefrom or from the transactions contemplated by this Agreement.

**8 CLOSING AND POSSESSION:** Upon demand, Purchaser and Seller will promptly deposit with Frontier Title & Escrow Company, whose address is 121 N. Washington Ave., Newport, Washington, 99156 (the "Closing Agent"), all instruments and monies required to complete the transaction in accordance with this Agreement. The sale shall close on or before September 15, 2017 (the "Closing"), which shall be the time when all appropriate documents have been recorded and sale proceeds, if any, are available for disbursement to Seller. In the event the transaction cannot close by the date specified due to an occurrence that may be remedied within a reasonable period of time, the parties may agree to extend Closing for a reasonable period of time and/or the period of time necessary to remedy the delaying occurrence, such extension must be in writing signed by the parties. Closing shall not, however, be extended beyond September 29, 2017 (the "Termination Date"), unless extension beyond this date is agreed to by the parties in writing. Purchaser shall be entitled to physical possession of the Property on Closing.

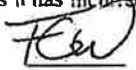
**9 CLOSING COSTS AND PRORATIONS:** The Closing Agent's fees and other closing fees and costs shall be shared equally between Purchaser and Seller, unless limited by law or regulation. Seller shall pay any real estate excise tax. Taxes for the current year, if any, rent, interest, insurance, and water and other utility charges or assessments constituting liens shall be prorated as of Closing.

**10 MATERIAL ALTERATION AND CASUALTY LOSSES:** Seller shall use best efforts to maintain the Property in its present condition until Purchaser is entitled to possession, but shall have no

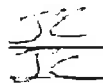
obligation to restore or repair any damage unless intentionally caused by Seller. If improvements on the Property, including timber or crops included in the sale, are destroyed or materially damaged by fire or other accidental casualty prior to Closing, or if Seller permits material adverse changes to occur in the Property for other reasons prior to change of possession, then Purchaser may elect to terminate this Agreement.

**11. DEFAULT/TERMINATION:** The sole remedy for breach of this Agreement shall be termination, and all Deposits shall be released by Closing Agent to Seller, except that Closing Agent may deduct from the Deposit any costs or expenses it has incurred prior to termination.

Seller:



Purchaser:



**12. ASSIGNMENT:** Purchaser's rights or interests under this Agreement may not be assigned by Purchaser without Seller's prior written consent, which consent is in Seller's sole and absolute discretion.

**13. NOTICES.** All notices or other communications which may be made pursuant to or which may be necessary or convenient in connection with this Agreement shall be in writing and shall be made to the parties to this Agreement at the addresses that appear after each party's name above (or at such address as each may by written notice to the other designate) by personal service or by regular, certified or registered mail. In the case of mailing, the weekday (except legal holidays) after the date of mailing shall be deemed the date of delivery. Notices may also be delivered by email, and shall be deemed delivered the day it was sent if received before 5:00 p.m. Pacific Time on a weekday, otherwise it will be deemed delivered the next weekday (except legal holidays).

**14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties hereto and no representation, inducement, promise or agreement, oral or written, between the parties hereto which is not embodied herein shall be of any force or effect. This Agreement shall also supersede any prior agreements between the parties concerning the Property.

**15. AMENDMENTS.** No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing and signed by all parties with the same formality as this Agreement is executed.

**16. SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, executors, administrators, successors, assigns and the legal representatives of their estates.

**17. NO WAIVER OF RIGHTS.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

**18. GOVERNING LAW AND CONSENT TO JURISDICTION:** This Agreement, and all subsequent contracts or agreements between the parties shall be governed by, constructed, and interpreted in



accordance with the laws of the United States of America, and the state of Washington, as applied to contracts made and to be performed in the state of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, or any subsequent contract or agreement, each of the parties agree to be subject to the exclusive jurisdiction in a Superior Court of the state of Washington or the United States District Court in the state of Washington, and that the venue of any action shall lie in Pend Oreille County, Washington, or the Eastern District of Washington, respectively.

**19. 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.

**20. COUNTERPARTS.** Email transmission of any signed original document, and retransmission of any signed emailed transmission shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm email transmitted signatures by signing an original document. This Agreement may be signed in counterparts.

**21. TIME IS OF THE ESSENCE.** Time is of the essence as to all terms and conditions of this Agreement.

**22. ATTORNEYS' FEES.** If Purchaser, Seller, or any real estate licensee or broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, each prevailing party shall recover their reasonable attorneys' fees. This provision shall survive Closing.

**23. CONFIDENTIALITY:** Seller and Purchaser each covenants and agrees with the other that it will use its best efforts, acting in good faith, not to disclose or permit the disclosure of the existence or the terms of the transaction contemplated herein, to any other person, without the other party's consent. Provided, however, Purchaser may disclose this transaction to Purchaser's attorneys, consultants, or lender, or as required by law or by any governmental agency, or reasonably believed by Purchaser's attorneys to be required by law; and provided further that Seller may disclose the transaction contemplated herein to Seller's attorneys, consultants or other agents or as required by law or by any governmental agency, or reasonably believed by Seller's attorneys to be required by law.

**Purchaser:**  
HiTest Sand, Inc.

By: John Carlson  
Its: Vice President

Silica Investments, Inc

By: John Carlson  
Its: Vice President

**Seller:**  
Public Utility District No. 1 of Pend Oreille  
County

By: Colin Willenbrock  
Its: General Manager

## **EXHIBIT M**

AFN #20170329491

09/18/2017 at 03:37 PM

DOCTYPE: DEED # PAGES: 2

MARIANNE NICHOLS, AUDITOR, PEND OREILLE COUNTY, WA,  
FILED BY: FRONTIER TITLE AND ESCROW

Filed for Record at Request of:

Public Utility District No. 1  
Of Pend Oreille County  
P.O. Box 190 Newport, WA 99156

# 6913  
Excise Tax on Real Estate Sale  
Amount Paid \$ 8  
Date 09/18/17  
Treasurer  
Pend Oreille County, Washington  
By E. K. K. K. K. K. Deputy

COPY

Grantor: Public Utility District No. 1 of Pend Oreille County  
Grantee: HiTest Sand, Inc.  
Abbreviated Legal Description: E1/2 NE1/4 25-31-45 & GL 1-4 30-31-46

### SPECIAL WARRANTY DEED

THE GRANTOR, Public Utility District No. 1 of Pend Oreille County, a municipal corporation, whose address is P.O. Box 190, Newport, WA 99156, for and in consideration of Three Hundred Thousand and 00/100 Dollars (\$300,000.00), and other good and valuable consideration, in hand paid, grants, bargains, sells, conveys, and confirms to HiTest Sand, Inc., a Canadian corporation ("Grantee"), whose address is Centre 104, 5241 Calgary Trail, Unit 601, Edmonton, Alberta, T6H 5X6 the following described real estate, situated in the County of Pend Oreille, State of Washington:

**Parcel 1 (453125000005)**

The East Half of the Northeast Quarter of Section 25, Township 31 North, Range 45, E.W.M., Pend Oreille County, Washington.

**Parcel 2 (463130010001)**

Government Lot 1, Section 30, Township 31 North, Range 46 E.W.M., Pend Oreille County, Washington.

**Parcel 3 (463130020001)**

Government Lot 2, Section 30, Township 31 North, Range 46, E.W.M., Pend Oreille County, Washington.

**Parcel 4 (463130500001)**

Government Lots 3 and 4 in Section 30, Township 31 North, Range 46, E.W.M., Pend Oreille County, Washington.

Subject to and reserving to the Grantor a perpetual easement and right to enter and install, maintain, repair, rebuild, operate, and patrol underground electric power distribution lines over,



in, under, and through the west sixty feet of Parcels 1, as well as reasonable ingress and egress across the parcels to reach the easement area.

The Grantor for itself and for its successors in interest do by these presents expressly limit the covenants of the deed to those herein expressed, and exclude all covenants arising or to arise by statutory or other implication, and do hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, will forever warrant and defend the said described real estate.

DATED this 14<sup>th</sup> day of September, 2017.

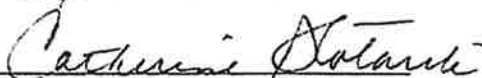


STATE OF WASHINGTON    )  
  ) ss.  
County of Pend Oreille    )

I certify that I know or have satisfactory evidence that **F. Colin Willenbrock** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **General Manager of Public Utility District No. 1** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 14 day of September, 2017.



  
Notary Public in and for the State of  
Washington, residing in Newport  
My commission expires: 8-15-19

## **EXHIBIT N**

COPY

AFN #20180331548

05/14/2018 at 10:56 AM

DOCTYPE: DEED # PAGES: 4

MARIANNE NICHOLS, AUDITOR, PEND OREILLE COUNTY, W  
FILED BY: WINSTON AND CASHATT

RETURN ADDRESS

Public Utility District No. 1
of Pend Oreille County
P.O. Box 190
Newport, WA 99156

# 7524  
Excise Tax on Real Estate Sale  
Amount Paid \$ 0  
Date 05-14-18  
Treasurer  
Pend Oreille County, Washington  
By Shelley L. L. R. Deputy

Document Title(s)

Special Warranty Deed - re-record for scrivener error in easement reservation
---

Reference Number(s) of Related Documents

20170329491
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Additional Reference #'s on page: 

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Grantor(s) (Last, First and Middle Initial)

Public Utility District No. 1	
of Pend Oreille County	

Additional Grantors on page: 

--

Grantee(s) (Last, First and Middle Initial)

HiTest Sand, Inc.	

Additional Grantees on page: 

--

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

E1/2 NE1/4 25-31-45 & GL 1-4 30-31-46
---------------------------------------

Additional legal ls on page: 

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Assessor's Property Tax Parcel/Account Number

453125000005, 463130010001, 463130020001, 463130500001
--

Additional parcel #'s on page: 

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The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

AFN #20170329491  
09/18/2017 at 03:37 PM  
DOCTYPE: DEED # PAGES: 2  
MARIANNE NICHOLS, AUDITOR, PEND OREILLE COUNTY, WA  
FILED BY: FRONTIER TITLE AND ESCROW

Filed for Record at Request of:

Public Utility District No. 1  
Of Pend Oreille County  
P.O. Box 190 Newport, WA 99156

# 6913  
Excise Tax on Real Estate Sale  
Amount Paid \$ 8  
Date 09/18/17  
Treasurer  
Pend Oreille County, Washington  
By [Signature] Deputy

Grantor: Public Utility District No. 1 of Pend Oreille County  
Grantee: HiTest Sand, Inc.  
Abbreviated Legal Description: E1/2 NE1/4 25-31-45 & GL 1-4 30-31-46

---

### SPECIAL WARRANTY DEED

THE GRANTOR, Public Utility District No. 1 of Pend Oreille County, a municipal corporation, whose address is P.O. Box 190, Newport, WA 99156, for and in consideration of Three Hundred Thousand and 00/100 Dollars (\$300,000.00), and other good and valuable consideration, in hand paid, grants, bargains, sells, conveys, and confirms to HiTest Sand, Inc., a Canadian corporation ("Grantee"), whose address is Centre 104, 5241 Calgary Trail, Unit 601, Edmonton, Alberta, T6H 5X6 the following described real estate, situated in the County of Pend Oreille, State of Washington:

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Parcel 2 (463130010001)  
Government Lot 1, Section 30, Township 31 North, Range 46 E.W.M., Pend Oreille County, Washington.

Parcel 3 (463130020001)  
Government Lot 2, Section 30, Township 31 North, Range 46, E.W.M., Pend Oreille County, Washington.

Parcel 4 (463130500001)  
Government Lots 3 and 4 in Section 30, Township 31 North, Range 46, E.W.M., Pend Oreille County, Washington.

SEE EXHIBIT A ATTACHED FOR EASEMENT RESERVATION.

~~Subject to and reserving to the Grantor a perpetual easement and right to enter and install, maintain, repair, rebuild, operate, and patrol underground electric power distribution lines over,~~

in, under, and through the west sixty feet of Parcel A, as well as reasonable ingress and egress across the parcels to reach the easement area.

The Grantor for itself and for its successors in interest do by these presents expressly limit the covenants of the deed to those herein expressed, and exclude all covenants arising or to arise by statutory or other implication, and do hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, will forever warrant and defend the said described real estate.

DATED this 14<sup>th</sup> day of September, 2017.

*F. Chell*

[illegible]

I certify that I know or have satisfactory evidence that **F. Colin Willenbrock** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **General Manager of Public Utility District No. 1** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 14 day of September, 2017.



Catherine Notari  
Notary Public in and for the State of  
Washington, residing in Newport  
My commission expires: 8-15-19

## **EXHIBIT A**

Subject to and reserving to the Grantor a perpetual easement and right to enter, maintain, repair, rebuild, operate, and patrol the existing underground electric power distribution lines over, in under and through a right-of-way 15 feet in width being 7.5 feet on either side of the boundary line between Parcels 2 and 3 and extending south through Parcel 4 to the southern boundary of Parcel 4, as well as reasonable ingress and egress across the parcels to reach the easement area.

## **EXHIBIT O**



## 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

**FOR IMMEDIATE RELEASE**

September 19, 2017

Media Contact: Kenna Tornow

[ktornow@popud.org](mailto:ktornow@popud.org) / 509-447-9328

### **PUD Sells Property to HiTest Sands, Inc.**

**Newport, WA** – The Pend Oreille County Public Utility District sold its south Newport property to HiTest Sands Inc. for \$300,000.

The PUD has not yet received an official request for utility service since HiTest acquired the land. If the energy intensive project were to move forward, the PUD would begin a comprehensive feasibility analysis on existing and new infrastructure. The parties would also need to negotiate a formal power contract.

"As a publicly owned entity it is important that we do our due diligence for our customers," said Colin Willenbrock, PUD General Manager. "The feasibility study will give us a better understanding of HiTest's requirements and our ability to properly serve them without impact to our other customers."

The PUD purchased the 172.47 acre property in 1995 with a plan to build a gas turbine generating facility. The plan was eventually abandoned and the land was managed for timber until March 2016 when the Board of Commissioners declared the land surplus to its needs.

"The PUD is constantly planning for the future needs of our customers and our communities," said Willenbrock. "At the time, there was a view that we needed to build additional cost-effective generation and there is no longer a need for generation on the lands."

The land was publicly advertised for sale on August 31 and September 7, 2016 and no bids were received. HiTest then began investigating potential sites in south Pend Oreille County in April 2017 after efforts stalled at several sites in Usk, Washington and Addy, Washington. HiTest identified the PUD's south Newport property plus an adjacent 13 acres owned by Pend Oreille County as a potential site and has been doing due diligence for the last several months.

In June 2017, the PUD officially acquired the adjacent county property with the intent to sell the entire package to HiTest. The PUD Board of Commissioners authorized the sale of the land to HiTest at the appraised price and that process closed on September 19.

### **About Pend Oreille County Public Utility District**

Pend Oreille PUD was established in 1936 and commenced operations in 1948. The District's reporting entity consists of four primary component units, or operating systems. The Electric System distributes electricity to residential and other consumers in Pend Oreille County. The Box Canyon Production





## **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**

System produces hydroelectric power from the Box Canyon Hydroelectric Project. The Water System consists of nine individual water distribution subdivisions. The Community Network System supplies wholesale broadband communication services. For more information visit: <http://popud.org/>.

###

## **EXHIBIT P**

**PRESS RELEASE**

**Date: October 3, 2017**

**From: Pend Oreille County Commissioners**

**Contact: Gregg Dohrn, Pend Oreille County Hi Test Project Manager**  
**Phone: 206-679-7507                      Email: greggdohrn@comcast.net**

**Pre-construction permitting process for silicon  
production facility near Newport Washington begins**

**Newport, Wash.** – A Canadian company, HiTest Sand, Inc., formally started the application process for permits necessary to build a \$325 million silicon production facility south of Newport on Monday, October 2.

This milestone, along with their recent purchase of 192 acres a few miles south of Newport establishes their commitment to build here, announced the Pend Oreille County Commissioners.

Top HiTest executives began a week of meetings with state and local officials from Washington and Idaho.

Gregg Dohrn, Pend Oreille County's HiTest Project Manager, said that in the discussions leading up to this announcement they have identified the state and local permits and approvals that must be obtained before construction can begin. Dohrn said with this formal announcement the County will now determine more specifically what information must be submitted and when the opportunities for public review and comment will occur. He estimates the application and review process could take at least a year. Construction would require two more years.

During the past year, HiTest had explored several location options. They also hired a company to make air dispersion models for their facility that will be necessary during the permitting process.

"HiTest intentionally has kept a low profile," said Jayson Tymko, president of the Edmonton, Alberta, based company. "Our management's approach to business is not to create false expectations. Now that we have chosen a site, we have begun the necessary steps to incorporate a Washington state entity as well as open a local office."

John Carlson, vice president, said they plan to be part of the community for a long time. Part of the reason they have taken so long to begin specific discussions with the

community about their plans was so they could complete studies to ensure the project's economic feasibility.

"We intend on having many public consultations and open houses to discuss our plans and listen to the resident's feedback," Carlson said. "We have completed preliminary layouts, and are now proceeding with validating these plans with recently completed geotechnical, access road and environmental studies.

The basic requirements will include compliance with the Washington State Environmental Policy Act (SEPA), Dohrn said. In addition, the Washington State Department of Ecology will require an extensive assessment of the emissions from the facility. This is to determine whether the facility can meet the national air quality standards of the Clean Air Act.

Carlson said they are currently running dispersion models up to 350 miles from their site and are within the Washington State air emissions standards. They have studied the wind data over the past 3 years. The studies also analyze visibility of dispersion.

Pend Oreille County will require a conditional use permit for the development of the site as well as building permits. HiTest purchased the undeveloped 192 acres from the Pend Oreille County Public Utility District who had purchased most of the property in anticipation of building a gas powered electrical generating facility back in the 1980's.

These county permits will assess: how materials will be shipped in and out of the site; how employees will travel; and how services like sewer and water will be provided. They will also ensure that appropriate measures have been taken so that there is no threat to ground or surface waters.

Colin Willenbrock, PUD general manager, said, "Now that HiTest has officially purchased property in the County, we will work with them on a formal request for service at the site and the execution of a collateral agreement to fund the necessary engineering analysis for power delivery." He said the analysis is a multi-party process involving our staff, neighboring Avista and the Bonneville Power Administration.

The District will also need to begin negotiating a long-term power supply agreement with sufficient financial security, Willenbrock said.

"Economic development projects of this scale generally start with the PUD," Willenbrock said. "Our Commissioners and highly qualified staff take a lot of pride in helping any new customer."

HiTest has projected that the facility will require 105 megawatts of electricity a year.

HiTest said they plan to employ 150 at the facility with an estimated plant life that exceeds 50 years. They estimate up to 400 will be employed for construction.

Pend Oreille County Commissioner Mike Manus said the positive economic impact on the county would be significant especially at this time when it is struggling. He said he believes that HiTest will be a good member of the community.

"We need a diverse economic base that will support young families and give us a more sustainable future," said Karen Skoog, Pend Oreille County Commissioner. "I believe our community's commitment to a rural way of life and the environment will make additional development reasonable and low impact."

Pend Oreille County Commissioner Steve Kiss said that this project will have economic benefits throughout the region. "We look forward to working with our regional partners in Bonner, Stevens, Kootenai, and Spokane County to maximize the benefits from this unique opportunity," Kiss said.

At their Horse Creek Quartz mine, HiTest Sand Inc. currently operates a seasonal quarry for a variety of industrial uses. The company originally evaluated the deposit for an alternate industrial use.

They started plans for a silica metal plant in Golden, British Columbia, based on the high quality of the quartz discovered. The low electricity rates and business friendly Washington State enabled HiTest to move the plans for a production facility to Newport.

It is anticipated that the raw material will be transported to the Newport facility by rail and/or by truck on designated heavy load routes through Bonner County, Idaho.

Silicon metal is used in the production of many products in the growing "green" technology industries including the making of aluminum, the production of solar panels and computer chips and components. Silicon metal is made from the reaction of silica (silicon dioxide, SiO<sub>2</sub>) and carbon materials like charcoal, coal and wood chips.

This state-of-the art facility, which the company said they would be explaining in detail as the permitting process advances, is considered environmentally friendly without toxic chemicals or air quality issues.

"Our plans are to hire as many local residents as possible," Tymko said.

But they will also have some of the top experts in the field. One of them is Jim May their chief operating officer. He was president and CEO of Dow Corning Silicon Energy Systems. Where he grew their silicon metal business from \$50 million to \$300 million over a five-year period. He will be a key member of their expert team during

construction and startup.

The Washington Department of Commerce has designated this a Project of Statewide Significance and awarded HiTest a \$300,000 grant to offset study costs to date. The Governor's office, Commerce staff and our state legislators have been involved and helpful from the beginning, said Dohrn.

"While we can see the potential for significant economic benefits, we understand that with tremendous opportunity comes tremendous responsibility, and we are ready to meet that challenge," said Dohrn.

The County Commissioners have established an Executive Committee of local elected officials to provide coordination throughout the permitting process. Elected officials representing the City of Newport, the PUD, the Port of Pend Oreille, Bonner County, and the Kalispel Tribe, as well as the Chair of the Pend Oreille County Economic Development Council have been invited to participate.

The Commissioners have also established a staff coordinating committee to ensure that the staff from all of the local agencies that may be directly or indirectly involved are working closely together. This coordination is focused not only on permitting but also to make sure that the community will take full advantage of the economic development opportunities. This will include specific workgroups to address such topics as housing needs and opportunities, workforce development, and contracting opportunities.

## **EXHIBIT Q**

December 13, 2017

Colin Willenbrock  
Pend Oreille County PUD  
PO Box 190  
Newport, WA 99156

Re: Cost Reimbursement Agreement (Agreement) and election for the Line and Load Interconnection Request (LLIR)

Dear Mr. Willenbrock,

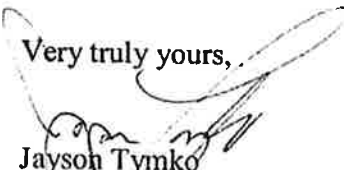
This letter is to formalize Silica Investments, Inc. (SI) LLIR election. In the District's October 17<sup>th</sup>, 2017 letter, Ms. Gentle detailed three options for the Bonneville Power Administration's LLIR study process.

These options were:

1. Submit request for 105 MW of capacity
  - a. New request would be needed for incremental 105 MW capacity in the future
2. Submit request for 210 MW of capacity
  - a. If significant time elapses between the phases, additional studies may be needed
  - b. Solutions for 105 MW of capacity will not be studied
3. Submit request for 105 MW of capacity and 210 MW of capacity
  - a. This would require two independent studies and separate payments
  - b. All options would be explored and quantified to assist in decision making

As discussed via phone and email, SI has elected Option 3 above. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jayson Tymko

President

Silica Investments Inc / HiTest Sand Inc

Cc: Jim May  
John Carlson  
Amber Orr  
Kimberly Gentle  
April Owen



## **COST REIMBURSEMENT AGREEMENT**

This COST REIMBURSEMENT AGREEMENT ("Agreement") is entered into this 13th day of December, 2017, by and between the Public Utility District No. 1 of Pend Oreille County, Washington ("District"), a municipal corporation of the State of Washington, and Silica Investments, Inc. a silicon smelter facility, incorporated on December 12, 2012 as an Alberta Corporation ("SI").

WHEREAS, by a letter dated April 18, 2017, SI requested power services from the District, to be delivered at a site located within Pend Oreille County, and capable of serving a smelting load of 105 MW capacity operated at a 98% load factor with the potential for a second 105 MW expansion phase for a total load of 210 MW; and

WHEREAS, SI purchased more than 180 acres just south of Newport, Washington on September 19, 2017 for the project; and

WHEREAS, delivery of power services to a 105 MW or 210 MW capacity smelting load operated at a 98% load factor and with minimal interruptions will require modification of existing transmission and delivery infrastructure, and the construction of new transmission and delivery infrastructure, on the systems of the District and the Bonneville Power Administration ("BPA") and Avista Utilities, Inc. ("Avista"); and

WHEREAS, prior to commencing construction of the modifications and the new transmission and delivery infrastructure, the District, Avista and BPA must undertake detailed studies and related activities to ensure that the modifications to existing transmission and delivery infrastructure, and the construction of such new infrastructure, will be sufficient to provide the delivery service requested by SI while maintaining the current level of service to others presently served and to be served in the future by the District, Avista and BPA systems; and

WHEREAS, the District as a non-profit municipal corporation has adopted certain policies in order to ensure prudent risk management, cost recovery, and various rate class protections; and

WHEREAS, the District's Line Extension Policy was approved by Board Resolution No. 1366 and effective April 1, 2014, and subsequently revised August 2, 2016, requires that line extension fees for all large industrial applicants over 500 kVA capacity be separately negotiated with the District and accompanied by a negotiated power contract (Fee Schedules §2.1.3); and

WHEREAS, in order to meet the District's Line Extension Policy and initiate and complete the detailed studies and related activities in a timely fashion so as to allow SI to construct the proposed smelter and commence operations on the schedule proposed by SI, the District and SI desire to enter into an agreement to facilitate the timely funding to these activities by SI.

NOW, THEREFORE, based on the mutual obligations and consideration contained herein, the receipt and sufficiency of which is hereby acknowledged, the District and SI agree as follows:

1. **Agreement to Pay.** SI agrees to pay and hold the District harmless from any and all costs (including costs that are both internal and external to the District) incurred by the District in its review, study and planning related to SI's request for service and/or the possible provision of electrical service by the District for the proposed smelter to be located within Pend Oreille County, Washington. Such costs include, but are not limited to, engineering and system planning costs, project management costs, operational study costs, right of way acquisition costs, design and projection costs, environmental planning and study costs, BPA study costs, legal fees and costs, and contract development costs (collectively, "Study and Planning Costs"). Such review, study and planning activities related to SI's request for service will develop, among other matters, facility additions and modifications to the District and BPA systems needed to serve the proposed SI smelter load. The District shall first use the Initial Deposit (identified below in paragraph 2) to pay or reimburse any Study and Planning Costs, but SI shall be fully responsible for the payment of any Study and Planning Costs that are in excess of the Initial Deposit and/or any Additional Deposits made by SI under paragraphs 2 or 3 below.

2. **Initial Deposit and Secondary Deposit.** Contemporaneously within SI's execution and delivery to the District of this Agreement, SI shall also deliver to the District a security deposit in the amount of Two-Hundred and Fifty Thousand Dollars (US\$2500,000.00) (the "Initial Deposit"). An Additional Two-Hundred and Fifty Thousand Dollar Deposit (US\$2500,000.00) shall be delivered on or before February 1, 2018 (the "Secondary Deposit"). A third deposit of Five Hundred Thousand Dollars (US\$500,000.00) shall be delivered on or before July 1, 2018 (the "Third Deposit"). The Initial Deposit, Secondary Deposit, Third Deposit and any Additional Deposits required hereunder, shall be deposited by the District into a separate, non-interest bearing account segregated from all other District funds. The Initial Deposit, Secondary Deposit, and any Additional Deposit(s) made under paragraph 3 below, are for the purpose of funding Study and Planning Costs, and are not pre-paid amounts for energy or demand. SI shall receive no credit on any future power bill from the District for amounts deposited or expended under this Agreement. The District's receipt of SI's request for service, Initial Deposit, Secondary Deposit and/or Additional Deposit(s) in no way indicates, ensures the availability of, or obligates the District to provide service to SI's proposed smelter at any location within Pend Oreille County or otherwise, nor does such receipt indicate or obligate the District to provide service at any published or non-published rate.

3. **Exhaustion of Security Deposit.** In the event the Initial Deposit and Secondary Deposit is exhausted in accordance with the terms of this Agreement prior to the completion and payment of all Study and Planning Costs, or in the event the District reasonably projects that the Initial Deposit, Secondary Deposit and/or any Additional Deposit(s), will be exhausted in ninety (90) days or less, the District may require SI to provide deposits of one or more additional amount(s) as determined by the District to be sufficient to complete and pay for all Study and Planning Costs ("Additional Deposit(s)"). Such request by the District to SI will be made in writing and specify the amount of the Additional Deposit required, and the Study and Planning activities that remain to be completed. SI agrees to make such Additional Deposit(s) as specified herein. Following the District's written request to SI for Additional Deposit(s), the District shall be under no obligation to continue Study and Planning activities until SI makes such Additional

Agreement, and after payment of all Study and Planning Costs to the District's sole satisfaction, the District shall provide SI with an accounting of any balance remaining of the Initial Deposit and/or any Additional Deposit(s). In the event that SI determines not to proceed with the construction of electrical infrastructure needed to serve SI's proposed smelter in Pend Oreille County, then SI will provide the District with written evidence of such election. In that event, any such amounts remaining of the Initial Deposit and/or any Additional Deposit(s) will be returned to SI. In the event that SI proceeds with the construction of the electrical infrastructure needed to serve SI's proposed smelter in Pend Oreille County, then any such amounts remaining of the Initial Deposit and/or Additional Deposit(s) shall be used to fund, in whole or in part, such electrical infrastructure construction. Nothing in this Agreement shall be construed as to prohibit the District from requiring or imposing new or additional security deposits for any other purpose related to providing the electrical service requested by SI.

**5. Termination.** Either the District or SI may terminate this Agreement upon written notice of such termination to the other party, which notice will state a termination date no less than thirty (30) days after the date of such written notice. In the event of such termination, the District shall return to SI any balance remaining from any Deposit and/or any Additional Deposit(s) made pursuant to this Agreement, but only upon the District's determination that all Study and Planning Costs have been paid. SI's obligations hereunder shall survive termination of this Agreement.

**6. Invoices.** The District will periodically, but no less frequently than once each quarter, provide SI with copies of the invoices that the District has paid using funds from the Initial, Secondary and/or any Additional Deposits.

**7. No Rights to Studies, Engineering Documents, Facilities or Components.** The payment by SI of any Initial and/or Additional Deposit(s) pursuant to this Agreement does not entitle SI to any rights in, or in respect of, the studies, engineering documents, facilities or components related to the Study and Planning activities of the District or BPA that are funded pursuant to this Agreement.

**8. Disclaimers.** The District disclaims any and all warranties for any activities conducted pursuant to this Agreement, and neither the District nor SI will be liable to the other for incidental or consequential damages related to any claim arising out of this Agreement.

**9. Choice of Law and Venue.** This Agreement shall be construed and enforced in accordance with the Laws of the State of Washington, United States of America. The District and SI acknowledge and agree that any action to interpret or enforce this Agreement or any terms and conditions thereof shall be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of Washington and the District and SI each hereby submits to the jurisdiction of said court for such purposes.

**10. Term.** Except for those provisions of this Agreement that are expressly preserved herein, this Agreement will expire and be of no further force and effect upon the completion and payment of all Study and Planning Costs, unless the Agreement is earlier terminated pursuant to paragraph 5 hereof.

11. **Entire Agreement.** This Agreement embodies the entire agreement between the District and SI, all other agreements, oral or written, are hereby merged into and superseded by this Agreement. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing signed by both the District and SI. No verbal or other agreements modify or affect this Agreement.

12. **Binding Effect.** This Agreement shall be binding upon the District and SI, and their heirs, successors, executors, administrators and assigns.


13. **Assignment.** Neither the District nor SI shall assign nor transfer this Agreement nor any rights hereunder without the prior written consent of the other.

14. **Notices.** All notices which may be required pursuant to the terms hereof are to be in writing and delivered personally to the party to receive the same or mailed by regular mail, postage prepaid, to the address specified below. All notices shall be deemed served upon delivery thereof or five (5) days following deposit of the notice in the U.S./Canada mails as required herein.


Notice to District: Kimberly Gentle, Director Power and Risk Management  
130 N. Washington  
Newport, WA 99156

Notice to SI: Jayson Tymko, President  
5241 Calgary Trail, Suite 601  
Edmonton, AB T6H 5G8

**Public Utility District No.1 of Pend Oreille County, Washington**

By:   
Name: Colin Willenbrock  
Title: General Manager  
Date: December 14, 2017

**Silica Investments Inc.**

By:   
Name: Jayson Tymko  
Title: President  
Date: Dec 13/17

## **EXHIBIT R**



## 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

**FOR IMMEDIATE RELEASE**  
December 18, 2017

Media Contact: Kenna Tornow  
[ktornow@popud.org](mailto:ktornow@popud.org) / 509-447-9328

### **HiTest Requests PUD Move Forward with Studies**

**NEWPORT, WA** – On December 13 Silica Investments, Inc., the parent corporation to HiTest Sand, Inc., submitted a formal request for power service to Pend Oreille Public Utility District. The request included a cost reimbursement agreement with an associated deposit for system studies and engineering work necessary for power deliveries to the proposed facility south of Newport.

With a load of this size, the Bonneville Power Administration (BPA) requires feasibility, impact and facilities study's to determine any potential effect to neighboring utilities and the overall power grid. The PUD also will complete the necessary engineering and project planning to determine the feasibility and the facilities necessary to deliver power to the proposed HiTest facility. The study process is anticipated to take approximately six months to complete.

"BPA's system impact study is really the first step toward determining if and how HiTest could connect to the system," said Colin Willenbrock, PUD General Manager. "HiTest has committed to paying the costs associated with the feasibility analysis."

HiTest paid a security deposit of \$250,000 to commence with the necessary planning and study process. A second deposit is due before February 1, 2018 in the same amount. A third deposit of \$500,000 is due before July 1, 2018. The funds will be used to cover all study fees and associated planning costs and will be held in a separate, non-interest bearing account segregated from all other PUD funds. Additional funds would be required for actual construction of any facilities and/or infrastructure.

#### **About Pend Oreille County Public Utility District**

Pend Oreille County Public Utility District was established in 1936 and began operations in 1948. The PUD is governed by three locally elected Commissioners. A General Manager and staff operate the utility within policies set by the Board of Commissioners. The PUD has four operating systems: The electric system distributes electricity to the county, the production system produces power from the Box Canyon Hydroelectric Project, the water system consists of nine individual water distribution subdivisions, and the community network system provides wholesale broadband communication services. For more information visit: <http://popud.org>.

###



## **EXHIBIT S**

RESOLUTION NO. 1411

A RESOLUTION OF PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY  
AFFIRMING THE PURCHASE AND SALE OF PARCEL NO. 19182.

WHEREAS, Public Utility District No. 1 of Pend Oreille County (the "District") surplused District lands with Parcel Nos. 17036, 19183, and 19193 ("District Properties") on March 15, 2016; and

WHEREAS, the District advertised the surplused District Properties for sale on August 31, 2016, and September 7, 2016; and

WHEREAS, the District did not receive any bids for purchase; and

WHEREAS, the District received inquiry and request for electric service from HiTest Sands, Inc. ("HiTest"), on April 18, 2017; and

WHEREAS, HiTest desired to purchase a parcel of land owned by Pend Oreille County described as:

Government Lot 1, Section 30, township 31 North, Range 46 E.W.M., Pend Oreille County, Washington.

(the "County Parcel"); and

WHEREAS, the District had previously installed underground distribution lines on, along, and through the western portion of the County Parcel and the District's Property; and

WHEREAS, the District determined that an easement for the existing underground electric power distribution lines through the County Parcel and extending south through the District Property to the southern boundary of the District Property is necessary and shall be reserved for the benefit of the District; and

WHEREAS, the District signed a tentative Letter of Intent and received earnest money from HiTest on April 25, 2017; and

WHEREAS, the District signed a revised Letter of Intent on June 13, 2017; and

WHEREAS, the District sent a draft Purchase Agreement to HiTest on June 16, 2017; and

WHEREAS, the District sought to acquire the County Parcel from Pend Oreille County to reserve an express easement for an existing underground distribution line; and

WHEREAS, the District received notice of the County's authorization to sell the County Parcel at the tax assessed value on June 20, 2017; and

WHEREAS, the County Parcel, once subject to the easement, was unfit to be used in the operations of the District's system, and thus was no longer necessary or useful in the District's operations; and

WHEREAS, during the regularly scheduled meeting of the District, held August 1, 2017, the attending public was given the opportunity to be heard on the matter of the sale of the District Properties and County Parcel to HiTest; and

WHEREAS, after extensive discussion, the District's Board of Commissioners determined the County Parcel, once subject to the easement, to be surplus to the District's needs and that it should be sold for its fair market value; and

WHEREAS, in unanimously adopting Resolution No. 1399, the District's Board of Commissioners expressed its intent to sell the four-parcel package (Parcel Nos. 17036, 19183, 19193, and 19182) following final appraisal and due diligence to HiTest; and

WHEREAS, the District did purchase and receive title to the County Property by a tax title property deed recorded August 2, 2017; and

WHEREAS, the District contracted with Valbridge Property Advisors to render an independent appraisal of the fair market value of the District Properties and the County Property; and

WHEREAS, Valbridge Property Advisors appraised the four-parcel package at \$250,000;

WHEREAS, the District and HiTest executed a Real Estate Purchase and Sale Agreement on August 21, 2017, for the District Properties and the County Property for a total purchase price of \$300,000; and

WHEREAS, the District executed and recorded a Special Warranty Deed for the sale of the four properties to HiTest on September 18, 2017; and

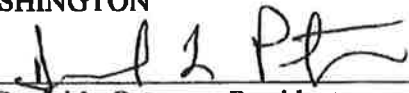
WHEREAS, the District subsequently recorded a corrected Special Warranty Deed for the sale of the four properties to HiTest on May 14, 2018, correcting the express easement reservation;

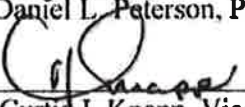
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Public Utility District No. 1 of Pend Oreille County, that the Board hereby affirms and ratifies the District's purchase of the County Property; the determination that such County Property was

surplus to the District's needs after reserving an express utility easement; and the sale of the County Property, along with the District Properties, to HiTest.

UNANIMOUSLY ADOPTED this 15<sup>th</sup> day of May, 2018.

BOARD OF COMMISSIONERS  
PUBLIC UTILITY DISTRICT NO. 1  
OF PEND OREILLE COUNTY,  
WASHINGTON

By   
Daniel L. Peterson, President

By   
Curtis J. Knapp, Vice President

By   
Richard A. Larson, Secretary

ATTEST:

  
Clerk of the Board

SUPERIOR COURT OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

RESPONSIBLE GROWTH \*NE WASHINGTON;  
CITIZENS AGAINST NEWPORT SILICON  
SMELTER; THEODORE & PHYLLIS KARDOS;  
DENISE D. TEEPLES; GRETCHEN L. KOENIG;  
SHERYL L. MILLER; JAMES W. & ROSEMARY  
CHANDLER; and PAMELA BYERS LUBY,  
Petitioners-Plaintiffs,

v.

PEND OREILLE PUBLIC UTILITY DISTRICT  
NO. 1; PEND OREILLE COUNTY; and HITEST  
SAND, INC.,  
Respondents-Defendants.

No. 18-2-02551-1

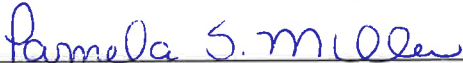
GR 17 DECLARATION OF  
ELECTRONIC SIGNATURE RE:  
DECLARATION OF F. COLIN  
WILLENBROCK IN SUPPORT OF  
DISTRICT'S MOTION FOR  
SUMMARY JUDGMENT

I, PAMELA S. MILLER, declare as follows:

I received the foregoing "*DECLARATION OF F. COLIN WILLENBROCK IN SUPPORT  
OF DISTRICT'S MOTION FOR SUMMARY JUDGMENT*" via email on September 25, 2018,  
consisting of 91 pages, including this declaration and exhibits, and that it is complete and legible.

I declare under penalty of perjury under the laws of the state of Washington that the  
foregoing is true and correct.

EXECUTED at Spokane, Washington, this 19<sup>th</sup> day of October, 2018.

  
PAMELA S. MILLER, Legal Assistant

53167171.1

GR 17 DECLARATION OF ELECTRONIC SIGNATURE RE:  
DECLARATION OF F. COLIN WILLENBROCK - 1

FOSTER PEPPER PLLC  
618 W. RIVERSIDE, SUITE 300  
SPOKANE, WASHINGTON 99201-5102  
PHONE (509) 777-1600 FAX (509) 777-1616

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