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## PUD NO. 1

### INTERLOCAL AGREEMENT FOR CARLSBORG SEWER FACILITIES PLAN

THIS INTERLOCAL AGREEMENT is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between CLALLAM COUNTY, Washington, a municipal corporation of the State of Washington, (the "County") and PUBLIC UTILITY DISTRICT NO. 1 of CLALLAM COUNTY, a Washington municipal corporation, (the "District"); both situated in Clallam County, Washington, (together "Parties") on the date shown below.

#### RECITALS

For the mutual benefit of both Parties to this Agreement, as well the taxpayers and ratepayers within the Carlsborg Urban Growth Area (UGA), the Parties enter into this Agreement in order to define their respective responsibilities regarding the drafting of a facilities plan for a sewer and water reuse system for the Carlsborg UGA.

#### AGREEMENT

For and in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

1. Duration: This Agreement shall commence as of the date hereof and shall terminate on completion of a sewer facilities plan, SEPA/NEPA documentation, and public involvement materials for the Carlsborg UGA.
2. Purpose: The purpose of this Agreement is to delegate between the Parties the responsibility for contracting with and managing the consultant that will produce the final facilities plan (which includes conducting biological, hydrogeological and cultural resources assessments), SEPA/NEPA documentation, and public involvement materials; identify the responsibilities between the Parties for aiding the consultant; and determine the financial contribution of the Parties. The purpose of the sewer facilities plan is to provide sufficient information to demonstrate no significant environmental impacts and for preparation of engineering designs, specifications and drawings of the proposed system.
3. District Duties and Obligations: The District shall contract directly with and manage the services of one or more consultants for the production of a facilities plan for a Carlsborg sewer and water reuse system. The District and the County shall both approve the consultant contract scope of work, schedule and budget and any change orders to the

contract. At the request of the consultant hired and managed by the District, the District shall provide to the consultant any and all information, studies, plans, or other documents that are reasonably necessary for the parties and the consultant to draft the facilities plan. The District shall provide technical support and consultation on the project consultant's scope of work and review of the findings, public involvement materials, SEPA/NEPA documentation, and the facilities plan. The District shall use the funds provided by the County to pay the consultant for services rendered while executing the scope of work of the consultant contract and not in an amount that exceeds the budget specified in the consultant contract. As a part of that management, the District shall coordinate communication and the flow of information between and among the County, the District, and the consultant. The District shall direct all work and duties of the consultant, as agreed to by the District, County, and consultant and as specified in the consultant contract. The District shall provide the County with monthly invoices for payment for work performed by the consultant. At the completion of the plan, the District shall provide the County with at least two (2) hard-copies of the plan and any reports, studies, or documents supporting said plan, along with the same documents in an electronic form.

4. County Duties and Obligations: The County shall cooperate in a reasonable manner with the District and the consultant in the production of the facilities plan. The District and the County shall both approve the consultant contract scope of work, schedule and budget and any change orders to the contract. At the request of the District, or the consultant hired and managed by the District, the County shall provide to the District any and all information, studies, plans, or other documents that are reasonably necessary for the parties and the consultant to draft the facilities plan. The County shall contribute up to \$220,000.00 toward the cost of contracting with the consultant. Additional financial contributions could be provided by the County or District for future contract change orders, if additional funding is acquired for the purpose of this Agreement. Within thirty (30) days of receiving an invoice from the District for amounts paid to the consultant, the County shall reimburse the District for those invoiced amounts. The County shall take all reasonable steps to aid the District and the consultant in the production of the plan. The County may, as agreed to by the District, County, and consultant, direct through ~~and with~~ the District Project Manager any portion of the work performed by the consultant that is within an area of technical expertise of County. The County shall be available for meetings with the consultant and the District regarding drafting of a facilities plan for a sewer and water reuse system for the Carlsborg UGA. The County shall provide technical support and consultation to the District on the project consultant's scope of work and review of the findings, public involvement materials, SEPA/NEPA documentation, and the facilities plan.
5. Termination: The County and the District may terminate this Agreement at any time upon one hundred and twenty (120) days' written notice to the other party.
6. Indemnification: Each party shall indemnify, defend and hold the other party harmless from any liability arising from any negligent or wrongful act or failure to act on the part of

itself and its employees. Neither party assumes responsibility to the other party for the consequences of any act or omission of any person, firm or corporation not a party to this agreement.

7. Assignment of Duties and Obligations: Other than those duties that will be the responsibility of the consultant that will be contracted with and managed by the District, neither party may assign any of their duties or obligation under this Agreement.
8. Entire Agreement/Amendment: This Agreement is the entire agreement between the Parties, unless other specifically stated herein, and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties. No prior agreement, correspondence, or portions thereof shall be used to interpret, modify, or explain the terms of the Agreement in the event that a dispute arises with respect to the Agreement.
9. Supplemental Agreements: The Parties agree to complete and execute all supplemental documents necessary or appropriate to fully implement the terms of this Agreement.
10. Waiver: No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies.
11. Applicable Law and Venue: This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to the Agreement shall be Clallam County, Washington.
12. Severability: If a court of law determines any provision of the Agreement to be unenforceable or invalid, the parties hereto agree that all other portions of this Agreement shall remain valid and enforceable.
13. No Third Party Beneficiaries: This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and permitted assigns. No other person or entity shall have any right of action or interest in this Agreement based upon any provision of the Agreement.
14. Notices: All communications, notices and demands of any kind which any party requires or desires to give to any of the other parties shall be in writing and either served on the

following individual(s) or deposited in the U.S. Mail, certified mail, postage prepaid, return receipt requested, and addressed as follows:

Public Utility District No. 1 of Clallam County  
PO Box 1090  
Port Angeles, WA 98362

Clallam County  
Department of Community Development  
223 East 4<sup>th</sup> St., Suite 5  
Port Angeles, WA 98362

15. Compliance with Laws: All Parties shall comply with all applicable federal, state and local laws, regulations and rules in performing this Agreement.
16. Interlocal Cooperation Act: The performance of the obligations of this Agreement shall be in compliance with the provisions of RCW 39.34, the Interlocal Cooperation Act. The Parties agree that no separate legal administrative entities are necessary in order to carry out this Agreement. There shall be no "joint board" as that term is used in RCW 39.34.030(4)(a).
17. Administration and Management. For purposes of RCW 39.34.030(4)(a), the Water and Wastewater Systems Assistant Superintendent of the District shall serve as the administrator responsible for administering the joint and cooperative undertaking among the Parties to this Agreement. At this time that particular position is held by Tom Martin. The District reserves the right to later identify a different employee as the administrator, or change the job title of Mr. Martin while maintaining him as the administrator.

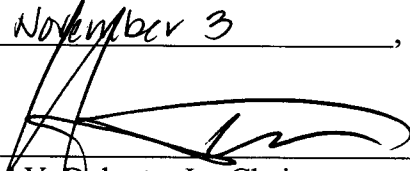
18. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
19. Recording: This Agreement will be filed with the County Auditor pursuant to R.C.W. 39.34.040 within five (5) days of the date of execution of this Agreement. All fees relating to such recording shall be paid by the County. District agrees to execute a release or other appropriate instruments as shall be necessary to certify compliance with the terms of this Agreement upon full and complete satisfaction of the terms of this Agreement.

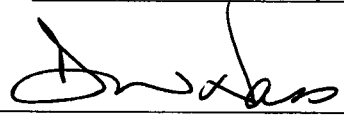
Clallam County, Washington

Public Utility District No. 1 of Clallam  
County

Dated November 3, 2009

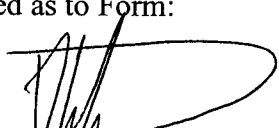
Dated Oct 27, 2009

By:   
Howard V. Doherty, Jr., Chair  
223 E. 4<sup>th</sup> Street, Suite 4  
Port Angeles, WA 98362-3015

By:   
Doug Nass, General Manager  
P.O. Box 1090  
Port Angeles, WA 98362-1090

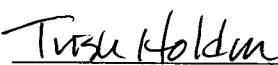
Approved as to Form:

Approved as to Form:

  
\_\_\_\_\_  
Douglas Jensen, <sup>Deputy</sup> Prosecuting Attorney

\_\_\_\_\_  
Attorney for the District

ATTEST:

  
\_\_\_\_\_  
Trish Holden, Clerk of the Board