

**INTERLOCAL AGREEMENT FOR THE
CARLSBORG WASTEWATER SYSTEM**

This Interlocal Agreement (the “Agreement”) is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington (the “RCW”) by and between CLALLAM COUNTY, WASHINGTON, a Washington municipal corporation (hereafter the “County”), and PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY, a Washington municipal corporation (hereafter the “District”) (the County and the District are hereafter sometimes referred to individually as “Party” and collectively as the “Parties”).

WHEREAS,

The Washington legislature has appropriated \$10,000,000 for a loan (the “Loan”) to the District through the Public Works Trust Fund (the “PWTF”), to fund the design and construction (the “Project”) of a new wastewater collection, treatment and reclaimed water reuse system (the “System”) for the Carlsborg Urban Growth Area in Clallam County. Repayment of the Loan was initially proposed through a local improvement district that was subsequently determined to be infeasible to set up.

The County has obligations under Washington’s Growth Management Act to plan for development in unincorporated areas of the County. To that end in 2008 the Western Washington Growth Management Hearings Board ruled that the County was required to provide wastewater service to maintain Carlsborg’s designation as a UGA. And so therefore the County is willing to repay the PWTF Loan from Opportunity Fund revenues.

The County has so far spent approximately \$638,000 for project planning and associated studies.

Since 2006, the County and the District have worked in coordination with one another to investigate the feasibility of building and funding a wastewater treatment and water reuse system for the Carlsborg Urban Growth Area. The County desires to design, construct, own, operate, maintain and repair the System.

The District is the eligible recipient of the Loan monies that have been allocated by the Washington Legislature.

At the time of the execution of this Agreement, the District contemplates entering into a PWTF Construction Loan Contract (the "Contract") with the Washington State Public Works Board (the "PWB") and intends, with the approval of the PWB, to assign the Contract to the County. Upon assignment of the Contract to the County, the debt will become a general obligation of the County.

The County has already established the Carlsborg Sewer Fund, the balance for which is currently approximately \$4,300,000, to otherwise assist in financing the Project.

The County will commit any other and additional funds that may be required in order to fully reimburse the PWTF for funds received under the Contract.

In entering into this Agreement, it is the intent of the Parties to confirm that the County will be solely responsible for all Project and System planning, design, permitting, construction, ownership, operation, maintenance and repair, and all costs associated therewith, and that the sole function of the District hereunder will be to make the Loan funds available for the Project by executing the Contract and thereafter participating as required in facilitating Loan reimbursements to the County and Loan repayment installments by the County.

THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

I. EXECUTION AND ASSIGNMENT OF PWTF CONTRACT

1.1 Upon execution of this Agreement, the District will execute the PWTF Construction Loan Contract. Thereafter, upon the District's receipt of written authorization by the PWB to assign the Contract to the County, the District will forthwith surrender and assign to the County, and the County will accept the surrender and assignment from the District of, all of the District's right, title and interest in, to and under the Contract. The County will thereupon assume and agree to be bound by and perform all of the obligations, terms, covenants and conditions of the Contract.

1.2 Upon receipt of confirmation that the PWB will consent to the assignment of the Contract to the County, the District's assignment and the County's assumption of the Contract will be memorialized in a manner and form acceptable to the PWB and each of the Parties. The assignment and assumption agreement shall be executed before any Project cost is charged against the Loan.

1.3 This Agreement shall be of no force and effect without the PWB's written consent to the District's assignment and the County's assumption of the Contract.

II. ADMINISTRATION OF LOAN

2.1 The PWTF Loan funds shall not be obligated, expended, or otherwise disbursed by either party until or unless the Contract has been assigned to the County. Thereafter, all use and administration of the Loan will be the responsibility of the County, subject to the terms and conditions of the Loan Contract.

2.2 The County shall be solely responsible for all Loan repayment installments due under the Contract, and for all administrative requirements of the Loan except as may otherwise be required by the Washington State Department of Commerce ("Commerce").

2.3 In the event Commerce requires the District to participate in the administration of the Loan, the District may charge the County an administrative fee, at a rate and in a manner to be negotiated by the Parties.

III. ROLE OF PARTIES

3.1 The County shall be solely responsible for all Project planning, design, permitting, and construction, and, upon completion of the Project, shall own, operate, maintain and repair the System, and shall be solely responsible for all matters related to the cost of service. The County shall be solely responsible for all costs associated with the Project and the System.

3.2 The District shall participate in the administration of the Loan as required by Commerce. The District shall not be deemed to be a party, express or implied, to any contract for consultation or design services for, or construction of, any phase of the Project, and shall not be liable for any costs associated with the Project or the System. The District shall provide information on future water supply needs for the Carlsborg UGA, to be used by the County to evaluate water-use mitigation costs to future water customers in the UGA, to full build-out of the UGA.

IV. SCOPE OF WORK REVISION

4.1 At the time of the execution of this Agreement, the scope of work for the Project is the construction of a sanitary sewer collection system and a sanitary sewer treatment and water reclamation system within the Carlsborg Urban Growth Area (the "UGA"). It is within the contemplation of the Parties at the time of the execution of this Agreement, however, that the County intends to revise the Project scope of work to the extent that sewage treatment and water reclamation and reuse will occur at the Sequim Water Reclamation Facility (the "SWRF") rather than in the UGA. (The treatment of sewage and the reclamation and reuse of water at the SWRF will hereafter be referred to as the

“Sequim Alternative.”) As used throughout this Agreement, the term “Project” shall also include any consultation, design, permitting and construction work associated with the Sequim Alternative, regardless of whether the Sequim Alternative is chosen.

4.2 As set forth in the County’s Carlsborg Sewer System Work Plan, revised February 19, 2013, the County will engage a consultant, at County expense, to evaluate the feasibility and cost-effectiveness of the Sequim Alternative. The consultant’s study and report shall include an evaluation of the effect reclamation and reuse outside the UGA would have on water-use mitigation costs to future water customers in the UGA, to full buildout of the UGA.

4.3 With respect to the Sequim Alternative, and for the sole purpose of keeping the District informed, the County shall (1) include the District in all County correspondence to the consultant, (2) provide the District timely notice of and the opportunity to participate in meetings with the consultant, and (3) provide the District with copies of all correspondence and reports from the consultant relating to the effect reclamation and reuse outside the UGA would have on water-use mitigation costs to future water customers in the UGA, to full buildout of the UGA.

4.4 The County shall exercise due diligence in evaluating the feasibility and cost-effectiveness of the Sequim Alternative in relation to the preferred alternative of the June, 2012, Facilities Plan to build a new wastewater collection, treatment and reclaimed water reuse system in the UGA, with particular consideration given to the effect the Sequim Alternative would have on water-use mitigation costs for future development in the UGA. The County’s due diligence requirement shall include providing a copy of the consultant’s report to the Washington State Department of Ecology water resource division for its review and comment as to the effect the Sequim Alternative would have on water-use mitigation costs to future water customers in the UGA, at full buildout of the UGA.

4.5 In the event the County proceeds with the Sequim Alternative and water-use mitigation costs to future water customers in the UGA are thereby adversely affected, the County will purchase or otherwise procure for the District additional existing water rights to supply water for full buildout of the area outside the District's current local utility district water service areas within the UGA, in a quantity sufficient to offset any adverse effects.

4.6 The District's participation in the evaluation of the Sequim Alternative, including any communication the District may have with the consultant hired by the County, shall not be deemed to render the District a party, express or implied, to any contract for consultation or design services for, or for construction of, any phase of the Project.

4.7 The roles of the Parties as set forth herein are based upon the Parties' shared expectation that the Project's scope of work may be revised to reflect sewage treatment at the SWRF. In the event, for any reason, the scope of work is not so revised, and sewage treatment is to occur within the UGA, this Agreement may be modified in whole or in part by agreement of the Parties.

V. INDEMNIFICATION

5.1 The County shall at all times indemnify and save the District harmless from and against all liability, loss, damages, costs, and expenses, including counsel fees, which the District may for any cause at any time sustain or incur by reason of having entered into the Contract and by reason of having assigned the Contract to the County. The County shall cause payment to be made to the District on account of any such liability, loss, damages, costs, or expenses before the District is compelled to make any payment on account thereof.

5.2 If any legal action is taken against the District under the Contract, either jointly with the County or alone, the County shall defend such action at its own expense, and the District shall cooperate with the County in the defense thereof.

5.3 Each Party agrees to indemnify, defend, and hold harmless the other Party from and against third-party claims for damages for personal injury or loss, including death, and property damage connected with the Project or the System and arising out of the negligence of the indemnitor's employees, officers, and agents. This duty to indemnify, defend, and hold harmless shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee or its agents or employees. Each Party's duty to indemnify, defend, and hold harmless the other for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of both parties or their agents or employees shall apply only to the extent of negligence of the indemnitor or its agents or employees. Each party specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

5.4 Each Party's duty to defend, indemnify and hold harmless shall include direct costs, reasonable attorney fees, court costs and all other claim-related expenses. Each party shall be responsible for their own personnel-related costs.

5.5 The District and the County hereby certify that the terms and conditions of the indemnity provisions in this Section V are the subject of mutual negotiation by the Parties and are specifically and expressly agreed to in consideration of the mutual benefits derived under the terms of this Agreement.

5.6 The indemnification provisions, 5.1 through 5.5 above, shall survive the termination of this Agreement.

VI. GENERAL PROVISIONS

6.1 Effective Date of Agreement: This Agreement shall be effective as of the date last written below.

6.2 Entire Agreement/Amendment: This Agreement is the entire agreement between the Parties 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.

6.3 Supplemental Agreements: The Parties agree to complete and execute all supplemental documents necessary or appropriate to fully implement the terms of this Agreement.

6.4 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 non-defaulting Party may nevertheless accept from the other any 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 performance was accepted by it. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies.

6.5 Dispute Resolution: Any dispute that arises out of the interpretation, performance, enforcement, or any other aspect of this Agreement shall be resolved by submitting the same to binding arbitration, which shall proceed according to the Washington arbitration act, Chapter 7.04A RCW, and shall be conducted within Clallam County, Washington; PROVIDED, however, that each Party shall select a nominating person within ten (10) days of notice of the dispute from one Party to the other. The District shall elect one nominating person, and the County shall elect one nominating person. The two nominating persons shall then meet and promptly select the arbitrator. If, within thirty (30) days of the notice of the dispute, the nominating persons do not select a person who agrees to serve as arbitrator, the arbitrator shall be selected by a Superior Court Judge of Clallam County. The Parties shall require a written decision by the

arbitrator as a condition of the selection of the arbitrator. The prevailing Party as determined by the arbitrator shall be entitled to its reasonable attorney fees and costs associated with the arbitration. The Parties shall share equally the cost of the arbitration proceeding. Venue for any action brought on the arbitration award, including enforcement of such award, shall be in the Superior Court of Clallam County, and such action shall be governed by application of the laws of the state of Washington. The prevailing Party in any such action on the arbitration award shall be entitled to its reasonable attorney fees and costs associated with such action.

6.6 Severability: If any provision of this Agreement is deemed by law to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative, or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from this Agreement with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid or inoperative portions so modified or eliminated. In addition, a phrase, clause or provision shall be substituted which is consistent with the intent of this Agreement and the severed phrase, clause or provision.

6.7 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.

6.8 Notices: All communications, notices and demands of any kind which either Party requires or desires to give to the other Party shall be in writing and either served on the following individuals or deposited in the U.S. Mail, certified mail, postage prepaid, return receipt requested, and addressed as follows:

Clallam County Administrator
223 East 4th St., Suite 4
Port Angeles, WA 98362

General Manager
PUD No. 1 of Clallam County
PO Box 1090
Port Angeles, WA 98362

6.9 Compliance with Laws: All Parties shall comply with all applicable federal, state and local laws, regulations and rules in performing this Agreement.

6.10 Interlocal Cooperation Act: The performance of the obligations of this Agreement shall be in compliance with the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act. The Parties agree that no separate legal administrative entity is 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).

6.11 Administration and Management: For purposes of RCW 39.34.030(4)(a), the County Administrator and the District General Manager, or their successors, shall serve as the co-Administrators responsible for administering the joint and cooperative undertaking set forth herein.

6.12 Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.13 Recording: This Agreement will be filed with the County Auditor pursuant to RCW 39.34.040 within five (5) days of the date of execution of this Agreement. All fees related to such recording shall be paid by the County. The 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.

6.14 Duration/Term: This Agreement shall terminate upon the earlier of (1) written agreement of the Parties or (2) complete repayment of the PWTF Loan.


6.15 Modification: This Agreement may be modified upon the agreement of the Parties.

6.16 Headings: The headings used in this Agreement are for general reference only and are not part of the Agreement.

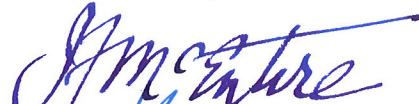
CLALLAM COUNTY, WASHINGTON

APPROVED this 19th day of March, 2013.


BOARD OF CLALLAM COUNTY COMMISSIONERS:



Michael C. Chapman, Chair



Jim McEntire



Howard V. Doherty, Jr.

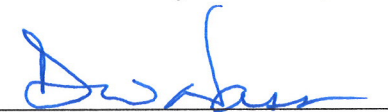
ATTEST:



Clerk of the Board


PUD NO. 1 OF CLALLAM COUNTY

DATED this 18th day of March, 2013.

By: 

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

Approved as to form only by:



Mark Nichols
Chief Deputy Prosecuting Attorney
Clallam County