

**INTERAGENCY AGREEMENT
BETWEEN
Washington State Department of Transportation (GCB 3980)
AND
PUD #1 of Clallam County**

This Agreement is between the Washington State Department of Transportation (WSDOT) and PUD #1 of Clallam County (Utility) individually the "Party" and collectively the "Parties."

RECITALS

1. The Parties desire to jointly establish a mutual and cooperative system to carry out their respective obligations of this Agreement for the construction of the WSDOT Fish Passage Program (Program).
2. The Program works to comply with a U.S. District Court injunction that requires WSDOT to remove state owned culverts that are barriers to salmon and steelhead spawning and migration.
3. WSDOT will fund the Program with state or federal funds approved by the Washington State Legislature. The Utility will fund the installation and relocation of any utilities that are located within WSDOT Right of Way pursuant to applicable franchise, permit or undocumented permission which are owned by the Utility.
4. The Program encompasses 31 culverts that are barriers to fish passage in Clallam and Jefferson County that are located within the Utility's service area, Exhibit A. Each culvert may constitute its own Project or may be bundled with other culverts to create a Project. WSDOT may deliver each Project using traditional or alternative contract methods. WSDOT continually reviews culverts that are barriers to fish. Additional culverts may be added to Exhibit A.
5. The Utility owns facilities that may need to be removed and/or relocated and/or constructed to facilitate construction of a Project, herein the "Work".
6. The Work shall be defined as all materials, equipment, labor, contract administration and any other efforts required to perform the relocation, construction, and/or removal of the Utility's facilities.
7. The Work may include betterments, installation of new facilities, removal of existing facilities from WSDOT right of way; and/or protection in place of facilities.
8. Unless specifically agreed upon by separate writing, the Work does not include relocation of utilities without property rights, and/or utilities located within prescriptive or private easements.

NOW THEREFORE, pursuant to Chapter 39.34 of the Revised Code of Washington, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, It Is Mutually Agreed as Follows:

1. PURPOSE

The purpose of this Agreement is to establish a cooperative system where the Parties jointly determine how to best accomplish the Work for each Project, for the duration of the Program.

2. GENERAL

1. This Agreement does not establish any separate legal or administration entity.

2. A separate Utility Construction Agreement may be executed by the Parties to establish the scope of work and payment provisions for Work to Utility facilities for each Project. Either WSDOT or the Utility may choose not to execute a separate Utility Construction Agreement for each Project if either determine it is in their best interest for the Utility to perform the Work themselves.

3. RESPONSIBILITIES

1. This Agreement will be administered jointly by WSDOT and the Utility pursuant to RCW 39.34.040(4)(a)-(b).
2. WSDOT itself may conduct the procurement process for goods or services related to the Work as part of the Project. Alternatively, upon notice by the Utility to WSDOT, the Utility may conduct the procurement process for goods or services related to all, or portions of the Work.
3. The Parties will work in a timely and cooperative manner to determine the contracting strategy for the Work for each Project.

4. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on September 5, 2023, and be completed on December 31, 2032, unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.

5. COMPENSATION

This is a non-financial Agreement. In no event shall either party seek compensation for work performed under this Agreement. Compensation for the Work shall be established by the Project under a separate Utility Construction Agreement.

6. AMENDMENT

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

7. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

8. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

9. CONTRACT MANAGEMENT

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Manager for WSDOT is:	The Contract Manager for PUD #1 of Clallam County is:
<p><i>Devin Maher</i> <i>Olympic Region Utilities Manager</i></p> <p><i>7407 31st Avenue NE</i> <i>Lacey WA 98516</i></p> <p>Phone: (360) 570-6745 E-Mail: MaherD@wsdot.wa.gov</p>	<p><i>Sean Worthington</i> <i>General Manager</i></p> <p><i>104 Hooker Road</i> <i>Sequim, WA 98382</i></p> <p>Phone: (360) 565-3240 E-Mail: sworthington@clallampud.net</p>

10. DISPUTES

The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

- a. The representative, as shown herein designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
- b. A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- c. In the event the representatives cannot resolve the dispute or issue, the Utility's General Manager, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- d. In the event the Utility's General Manager and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the Utility and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member professional mediator not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

11. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

12. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

13. MAINTENANCE OF RECORDS

a. The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

b. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

14. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes, and local laws, rules and regulations;
- b. Exhibits and Appendices – list separately; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

15. RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

16. SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

17. SITE SECURITY and SAFETY

While on WSDOT premises, the Utility, its agents, employees, or subcontractors shall comply with

WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases such as Covid.

18. TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

19. TERMINATION FOR CONVENIENCE

For any reason, either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party.

20. MUTUAL INDEMNIFICATION

- a. To the extent permitted by law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, including attorney's fees (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.
- b. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- c. This indemnification and waiver will survive the termination of this Agreement.

21. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

22. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

23. COUNTERPARTS AND ELECTRONIC SIGNATURE

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other parties are relying on its electronic or "PDF" signature.

IN WITNESS WHEREOF, the parties have executed this Agreement.


Requesting Entity	Washington State Department of Transportation
By: 	By: <i>Devin Maher</i>
Printed: Sean Worthington	Printed: Devin Maher
Title: General Manager	Title: Olympic Region Utility Manager
Date: 11-14-2023	Date: 11/16/2023

EXHIBIT A

Inventory of WSDOT owned culverts that are barriers to fish passage within the PUD #1 of Clallam County's service area and are programmed to be removed by WSDOT by 2030.

SiteId	Road	MilePost	Stream	Tributary	WRIA	County
18.0234 1.10	US 101	250	Ennis Cr	Strait of Juan de Fuca	18	Clallam
18.0283 2.00	US 101	238.35	Indian Cr	Elwha R	18	Clallam
990075	US 101	271.98	Chicken Coop Cr	Sequim Bay	17	Clallam
990107	US 101	270.57	Dean Cr	Sequim Bay	17	Clallam
990134	US 101	274.25	Eagle Cr	Strait of Juan de Fuca	17	Clallam
990169	US 101	189.4	Grader Cr	Bogachiel R	20	Clallam
990219	US 101	267.18	Johnson Cr	Sequim Bay	17	Clallam
990240	US 101	250.5	Lees Cr	Strait of Juan de Fuca	18	Clallam
990269	US 101	184.66	May Cr	Bogachiel R	20	Clallam
990326	US 101	248.1	Peabody Cr	Strait of Juan de Fuca	18	Clallam
990448	US 101	246.4	Tumwater Cr	Port Angeles Harbor	18	Clallam
990480	SR 112	49.48	Whiskey Cr	Strait of Juan de Fuca	19	Clallam
990481	US 101	249.4	White Cr	Ennis Cr	18	Clallam
990554	US 101	209.32	Wisen Cr	Sol Duc R	20	Clallam
990941	SR 112	29.7	Butler Cr	Butler Cove	19	Clallam
991258	SR 112	29.71	unnamed	Butler Cr	19	Clallam
991259	SR 112	12.26	unnamed	Hoko R	19	Clallam
991661	SR 112	53.5	Falls Cr	Salt Cr	19	Clallam
991667	US 101	268.54	unnamed	Sequim Bay	17	Clallam
991686	SR 112	56.5	unnamed	Coville Cr	19	Clallam
991732	SR 112	29.12	Indian Cr	Strait of Juan De Fuca	19	Clallam
991738	SR 112	51.6	Uptha Cr	Salt Cr	19	Clallam
991850	US 101	271.83	unnamed	Sequim Bay	17	Clallam
994464	US 101	269.49	unnamed	Sequim Bay	17	Clallam
996536	SR 112	49.62	EF Whiskey Cr	Whiskey Cr	19	Clallam
996539	SR 112	51.53	Itsa Cr	Uptha Cr	19	Clallam
996684	SR 112	17.14	Swamp Cr	Clallam R	19	Clallam
991507	US 101	182.2	unnamed	Dowans Cr	20	Jefferson
991575	US 101	181.2	unnamed	Dowans Cr	20	Jefferson
997054	US 101	171.29	unnamed	Hoh R	20	Jefferson
990717	US 101	169.42	unnamed	Braden Cr	20	Jefferson