

**DOUGLAS-GRANT LAMPREY COLLECTION  
INTERLOCAL COOPERATIVE AGREEMENT**

THIS AGREEMENT is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON ("Douglas"), and PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON ("Grant"), collectively referred to as "Parties" and individually as "Party".

**Recitals:**

- A. The Parties are authorized, pursuant to RCW Chapter 39.34 and Title 54, to enter into Interlocal Cooperative Agreements.
- B. Douglas is required under the Wells Aquatic Settlement Agreement Pacific Lamprey Management Plan to implement protection, mitigation and enhancement measures for Pacific lamprey. Implementation of these measures requires the use of Pacific lamprey collected at Priest Rapids Dam.
- C. Grant collects Pacific lamprey at Priest Rapids Dam in support of objectives of the Grant County PUD Pacific Lamprey Management Plan.
- D. Grant has the infrastructure and trained staff already available at Priest Rapids Dam to collect Pacific lamprey in excess of its needs, and is willing to extend collection efforts to meet the needs of Douglas.
- E. Douglas desires to reimburse Grant the cost of lamprey collection for up to fifteen (15) days, or one-thousand (1,000) fish per year, whichever occurs first.

NOW THEREFORE; in consideration of the mutual promises and covenant contained herein, the Parties agree as follows:

**1. TERM AND TERMINATION.**

This Agreement shall remain in full force and effect until December 31, 2021 unless terminated earlier as set forth in Section 1.1 or 1.2 below. This Agreement is to take effect on the day and year that both Grant and Douglas sign the Agreement. The terms of this Agreement may be adjusted annually by separate instrument agreed to in writing by both Parties.

**1.1 Mutual Agreement to Terminate.**

By mutual written agreement, the Parties may terminate this Agreement at any time.

1.2 Unilateral Termination.

Either Party may terminate this Agreement with at least one (1) years notice. The March 1<sup>st</sup> following delivery of a termination notice will be the effective date of notice.

2. PURPOSE.

The purpose of this Agreement is to utilize Grant's Pacific lamprey trapping capabilities to collect lamprey for Douglas. Both Parties agree that through execution of this Interlocal Cooperative Agreement, savings to the customers of both Parties can be achieved.

3. SERVICES PROVIDED BY GRANT.

Grant will operate its in-fishway lamprey traps and collect and hold Pacific lamprey at its holding facility. Grant will notify Douglas when lamprey are available for pickup.

4. SERVICES PROVIDED BY DOUGLAS.

Douglas will acquire the necessary permits associated with transporting Pacific lamprey from Grant's holding facilities and coordinate with Grant staff the date(s) and time(s) to facilitate the transfer of fish.

5. DOUGLAS' PAYMENT OF COSTS.

Douglas will reimburse Grant for the costs associated with trapping and holding lamprey at Priest Rapids Dam, not to exceed ten-thousand (\$10,000.00) per year.

Grant will invoice Douglas for the costs associated with the trapping by November 30th of each year for the term of the Agreement. Payments made by Douglas shall reference the Agreement, ILA No. 430-08667, and be submitted to:

Public Utility District No. 2 of Grant County, WA  
Attn: Accounts Receivable  
PO Box 878  
Ephrata, WA 98823

6. INSURANCE.

- A. Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, Douglas shall obtain and maintain continuously, at its own expense, a policy or policies of insurance with insurance companies rated A- VII or better by A. M. Best, as enumerated below. Any significant deductible, self-insured retention or coverage via captive must be disclosed and is subject to approval by Grant's Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of Douglas and not recoverable under any part of this Contract.

Douglas Required Insurance

1. **General Liability Insurance:** Commercial general liability insurance, covering all operations by or on behalf of Douglas against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:

- a. Premises and Operations;
- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability (with deletion of the exclusion for liability assumed under Contract);

with the following minimum limits:

- e. \$1,000,000 Each Occurrence
- f. \$1,000,000 Personal Injury Liability
- g. \$2,000,000 General Aggregate (per project)
- h. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include Grant as additional insured on a primary and non-contributory basis for ongoing operations. A waiver of subrogation will apply in favor of Grant.

2. **Workers' Compensation and Stop Gap Employers Liability:** Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for Each Accident, Each Employee, and Policy Limit. Douglas expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions

of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.

If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers (USL&H) Act, Jones Act, or under U.S. laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Such coverage shall include USL&H and/or Maritime Employer's Liability (MEL).

3. **Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned, rented, leased, non-owned, and hired vehicles used in the performance of the work, with a minimum limit of \$1,000,000 per accident for bodily injury and property damage combined and containing appropriate uninsured motorist and No-Fault insurance provision, when applicable.

Automobile liability insurance will include Grant as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of Grant.

- B. **Evidence of Insurance** - Prior to performing any services, and within ten (10) days after receipt of the Agreement Award, Douglas shall file with Grant a Certificate of Insurance showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with a copy of the endorsement naming Grant as an Additional Insured for each policy where indicated in Section A.

Failure of Grant to demand such certificate or other evidence of compliance with these insurance requirements or failure of Grant to identify a deficiency from the provided evidence shall not be construed as a waiver of Douglas' obligation to maintain such insurance. Acceptance by Grant of any certificate or other evidence of compliance does not constitute approval or agreement by Grant that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

Grant shall have the right but not the obligation of prohibiting Douglas or subcontractor from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If Douglas fails to maintain insurance as set forth above, Grant may purchase such insurance at Douglas' expense. Douglas' failure to

maintain the required insurance may result in termination of this Contract at Grant's option.

- C. Subcontractors - Should Douglas acquire any subcontractors under this Agreement Douglas shall ensure that subcontractor(s) meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Douglas shall furnish Grant with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- D. Cancellation of Insurance - Douglas shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies or Douglas shall provide thirty (30) days advance written notice to Grant for cancellation or any material change in coverage or condition, and ten (10) days advance written notice for cancellation due to non-payment. Should Douglas receive any notice of cancellation or notice of nonrenewal from its insurer(s), Douglas shall provide immediate notice to Grant no later than two (2) days following receipt of such notice from the insurer. Notice to Grant shall be delivered by facsimile or email.

7. FAILURE TO PERFORM.

If any Party determines that another Party is not in compliance with one (1) or more of the requirements of this Agreement, it shall notify the other Party within five (5) business days of such determination.

8. REPRESENTATIVES OF THE PARTIES.

- A. For Grant, all notices shall be sent to:

Mike Clement  
Public Utility District No. 2 of Grant County, Washington  
P.O. Box 878  
154 A Street SE  
Ephrata, WA 98823  
Email: Mclemen@gcpud.org

Or such other party as Grant shall direct in writing.

- B. For Douglas, all notices shall be sent to:

Chas Kyger (Aquatic Resource Biologist)  
1151 Valley Mall Parkway  
East Wenatchee, WA 98802  
Phone: 509-881-2388  
Email: ckyger@dcpud.org

Notices shall also be sent to:

Shane Bickford (Natural Resources Supervisor)  
1151 Valley Mall Parkway  
East Wenatchee, WA 98802  
Phone: 509-881-2208  
Email: sbickford@dcpud.org

Or such other party as Douglas shall direct in writing.

9. AMENDMENTS.

At any time, the Parties may agree to amend the terms of the Agreement in writing on the form attached as Appendix "A". There shall be no oral modifications to this Agreement.

10. INDEMNITY.

To the full extent permitted by applicable law, the Parties agree to hold each other harmless and indemnify one another for any acts of negligence committed or caused by one Party or its agents, consultants, employees or sub-contractors that harms the other or a third party including, but not limited to, property damage, loss of fish and personal injury or death. The Parties stipulate that this indemnity provision was mutually negotiated.

Limitation of Liability: Notwithstanding the foregoing paragraph, in no event shall any Party be liable to another Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from such Party's sole, joint, or concurrent negligence.

11. ADMINISTRATION OF AGREEMENT.

This Agreement shall be jointly administered by a representative of Douglas and a representative of Grant. Absent written notice by one Party to the other, the administrators shall be: Douglas – Chas Kyger; Grant – Mike Clement.

12. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document.

13. AUTHORITY.

Each person signing this Agreement has the full authority of the Party on behalf of which they are signing to execute this Agreement and to bind the Party to the terms of this Agreement.

14. JURISDICTION AND VENUE.

This Agreement is made, executed under and is to be construed by the laws of the State of Washington. Subject to the dispute resolution provisions of Section 15, in the event of an arbitration proceeding, or an appeal therefrom the undersigned agree that the venue for such proceeding shall be in the county where the defendant has its headquarters. Grant and Douglas stipulate that a visiting judge shall be assigned to the case so that the presiding judge, is not a customer of either Party. The substantially prevailing Party in any legal action herein shall be entitled to reasonable attorney fees and all reasonable costs, including, but not limited to, expert witness fees, and travel and lodging expenses.

15. DISPUTE RESOLUTION.

In the event that there is a dispute regarding any matter arising under this Agreement, the Parties shall engage in the following dispute resolution process:

15.1 The disputing Party shall immediately provide written notice to the other Party of this Agreement, and within ten (10) business days of the receipt of the written notice, the Parties' project administrators shall meet in person or by telephone to attempt to resolve the dispute.

15.2 In the event the project administrators cannot resolve the dispute, within five (5) business days following the meeting in subsection 15.1, the project administrators shall provide written documentation of the dispute to their respective supervisors.

15.3 Within ten (10) business days following receipt of the written documentation of the dispute from the Parties' project administrators, the project administrators' supervisors shall meet in person to try to resolve the dispute.

15.4 Following the meeting set out in subsection 15.3 and if the project administrators' supervisors agree, a further meeting between the general managers, shall be held in person within ten (10) business days to try to resolve the dispute.

15.5 If any dispute arising among the Parties in relation to this Agreement is not resolved after good faith efforts of the Parties to reach a resolution, then the dispute shall be submitted to binding arbitration. In the event that the Parties cannot agree to an arbitrator, each Party may select one arbitrator. The selected arbitrators shall then select a third arbitrator. In the event that the selected arbitrators cannot agree to the third arbitrator, the third arbitrator shall be selected by the Superior Court of Douglas County. The decision of the majority of the arbitrators shall be final and binding. Unless otherwise agreed, the arbitration shall be conducted in accordance with Washington's Mandatory Arbitration Rules. Judgment upon any award rendered by an arbitrator may be entered in any court or administrative body having appropriate jurisdiction. The Parties shall equally share the cost of any arbitration process, including the cost of the third arbitrator, court reporter, and room rental. Each Party shall pay for its selected arbitrator. The substantially prevailing Party shall be entitled to an award for its reasonable legal fees and costs.

16. EFFECT OF OTHER AGREEMENTS.

This Agreement shall not change or affect the responsibilities and obligations of Douglas. Any modification to this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party.

17. ENTIRE AGREEMENT.

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

18. UNCONTROLLABLE FORCES.

The Parties shall not be in breach of their respective obligations to the extent that the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or



negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

1. strikes or work stoppage; and
2. floods, earthquakes, fires, or other natural disasters; terrorist acts; and
3. final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, or conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require any Party to settle a strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance.

19. WAIVERS.

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20. ASSIGNMENT.

This Agreement is binding on any successors and assigns of the Parties. No Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Parties' written consent. Such consent shall not be unreasonably withheld.

21. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS.

The Parties, in performance of this Agreement, shall abide by all applicable federal, Washington State and local laws, statutes, codes, ordinances, regulations, and rules.

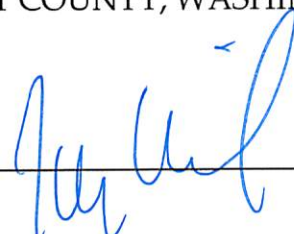
22. SIGNATURES.

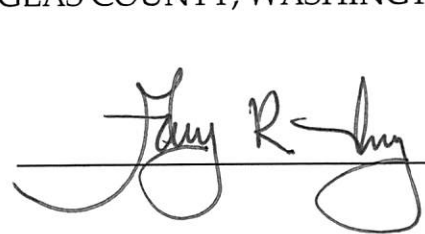
The Parties have caused this Agreement to be executed as of the latest date that all Parties have signed this Agreement.

IN WITNESS WHEREOF, each Party to this Agreement has caused it to be executed on the date indicated below.

PUBLIC UTILITY DISTRICT NO. 2 OF  
GRANT COUNTY, WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF  
DOUGLAS COUNTY, WASHINGTON

By: 

By: 

Title: Senior Mgr - Env. Affairs

Title: General Manager

Date: 8-15-18

Date: 8.20.18

APPENDIX "A"  
AMENDMENT NO. \_\_

Pursuant to Section 9, the following changes are hereby incorporated into this Agreement:

- A. Description of Change:
  
- B. Time of Completion: The time of completion shall be increased (decreased) by \_\_\_\_\_ days. The revised completion date shall be \_\_\_\_\_.  
OR  
The completion date shall remain \_\_\_\_\_.
  
- C. Agreement Price Adjustment: As a result of this Amendment, the (not to exceed) Agreement Price shall remain unchanged (be increased/decreased by the sum of \$ \_\_\_\_\_ including sales tax). This Amendment shall not provide any basis for any other payments to or claims by Douglas as a result of or arising out of the performance of the work described herein. The new total revised (maximum) Agreement Price is \$ \_\_\_\_\_, including changes incorporated by this Amendment.
  
- D. Except as specifically provided herein, all other Agreement terms and conditions shall remain unchanged.

PUBLIC UTILITY DISTRICT NO. 2 OF  
GRANT COUNTY, WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF  
DOUGLAS COUNTY, WASHINGTON

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_