

INTERLOCAL AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 30th day of November 2009, by and between STATE OF WASHINGTON DEPARTMENT OF FISH AND GAME, a political subdivision of the State of Washington, (hereinafter "WDFW"), and PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, a municipal corporation of the State of Washington, (hereinafter the "District").

Recitals:

District desires to enter into this Agreement to fulfill its requirements relating to the Native Resident Fish Management Plan as set for in its FERC License dated April 17, 2008, as well as those requirements in the District's Washington Department of Ecology Clean Water Act Section 401 Certification dated April 3, 2007: and amended March 17, 2008.

In accordance with these agreements, the District is required to pay up to \$1,500,000 to renovate the existing Columbia Basin Hatchery facility and annually pay into a fund the sum \$100,000.00 based upon 2003 dollars annually adjusted per U.S. Department of Labor, Bureau of Labor Statistics Price Index for the Western Region to purchase, produce, transport or otherwise obtain trout and perform surveys of resident fish species within the Priest Rapids and Wanapum reservoirs.

WDFW is willing to perform the tasks and services set forth in this Agreement in consideration of the payments to be made by the District.

WDFW and the District desire to enter into this agreement in accordance with the terms of the Interlocal Cooperative Act, RCW 39.34

NOW THEREFORE, IT IS AGREED THAT:

1. PURPOSE, SCOPE OF SERVICES AND COMPENSATION

The purpose of this agreement is to have the WDFW perform certain actions as described herein which will fulfill all of the District's requirements relating to Native Resident Fish as set for in its FERC License dated April 17, 2008, as well as those requirements contained in the District's Washington Department of Ecology Clean Water Act Section 401 Certification dated April 3, 2007, and amended march 17, 2008 in consideration of the District's payment of the compensation as set forth herein.

A. WDFW shall:

(i) Renovate its Columbia Basin Fish Hatchery to continue stable operations and the current or agreed to production of up to 60,000 to 70,000 pounds of trout annually through the term of this Agreement;

(ii) For the term of this Agreement, on a yearly basis, produce, transport and strive towards the goal of stocking 137,000 pounds of trout (inclusive of the 60,000 to 70,000 pounds referenced in (i)) inside the Priest Rapids Project Area (e.g. Burkett Lake) as well as other lakes within Grant County, Washington;

(iii) Perform a survey and inventory of resident fish species within the Priest Rapids and Wanapum reservoirs at a frequency of not less than every five years to depict trends in species abundance, distribution and absence-presence and to provide the District copies of said reports within 6 months after completion of the particular inventory and survey.

B. In consideration of WDFW's performance of the above describe services, the District shall make payments to WDFW as follows;

(i) The District will reimburse WDFW for the actual costs incurred by WDFW in renovating the Columbia Basin Fish Hatchery, including overheads which are properly allocable in accordance with generally accepted accounting standards consistently applied. In no event shall the total amount paid to WDFW exceed a total of \$1.5 million.

(ii) The District will reimburse WDFW for the actual costs incurred by WDFW in providing the services described in Sections A (ii) and A (iii), including overheads which are properly allocable in accordance with generally accepted accounting standards consistently applied. In no event shall the total amount paid to WDFW for these services exceed the funds available in the Native Resident Fish Account.

Payment will be made by District upon completion of work following District approval of WDFW's invoices. Invoice shall be subject to the review and approval of the District. Invoice shall be in a detailed and clear manner supported by such information District may require. The District will make payment to WDFW within thirty (30) days after District's receipt and approval of said invoice.

C. WDFW agrees that it shall not itself or through third parties directly or indirectly advocate or support to any third party that the District undertake any protection, enhancement or mitigation measures for species covered in the Native Resident Fish Management Plan or make any expenditure of funds for species covered in the Native Resident Fish Management Plan except as otherwise expressly provided for in this agreement.

D. WDFW agrees to provide an annual fish stocking report(s) for the Columbia Basin Hatchery which shall include the number and size of fish stocked by date and location. The report(s) will be due February 1 for the previous calendar year's fish stocking activity.

E. WDFW agrees to provide a resident fish survey report detailing the methodology, data collection, analysis, and discussion of findings once every five years. The report will be due February 1 of the sixth year for the previous calendar years of survey activity.

2. TERM

The Agreement shall be effective upon execution by both the District and the WDFW and upon filing in the manner specified in Paragraph 8 below. The Agreement shall remain in full force and effect until the expiration of the District's current FERC license, which date is April 17, 2052. Either party may terminate this Agreement and recover damages in the event of a material breach provided the defaulting party is given thirty (30) days written notice of the breach and fails to cure the breach within the thirty (30) day notice period. Alternatively, the non-defaulting party may pursue any other legal remedies, including specific performance.

3. INDEMNIFICATION

The District and the WDFW each agree to be responsible and assume liability for their own wrongful and/or negligent acts or omissions, or those of their officers, agents or employees to the fullest extent required by law, and further agree to save, indemnify, defend and hold the other party harmless from any such liability. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

4. INSURANCE

The WDFW agrees to provide public liability and property damage insurance (or a certificate of self insurance) with limits of liability not less than \$1,000,000 for the duration of this Agreement.

5. ASSIGNMENT

This Agreement cannot be assigned, transferred or any portion subcontracted by either party hereto without the prior written consent of the other party.

6. COMPLIANCE WITH LAWS

Each party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.

7. RELATIONSHIP OF THE PARTIES

No agent, employee or representative of the District shall be deemed to be an agent, employee or representative of the WDFW for any purpose, and the employees of the District are not entitled to any of the benefits the WDFW provides to WDFW employees. No agent, employee or representative for the WDFW shall be deemed to be an agent, employee or representative of the District for any purpose, and the employees of the WDFW are not entitled to any of the benefits the District provides to District employees.

In the performance of the work herein contemplated, the party performing the work is an independent contractor with the authority to control and direct the performance of the details of the work; however, the work contemplated herein shall be subject to the general rights of inspection and review of the party requesting the work be done, to secure the satisfactory completion thereof.

8. FILING

Upon execution of this Agreement, the parties shall file a true and complete copy thereof with the Grant County Auditor in compliance with the provisions of Chapter 39.34. This Agreement shall not be deemed effective until such filing has been completed.

9. ADMINISTRATOR

- A. Tom Dresser shall be the Administrator of this Agreement for the District.
- B. Jeff Korth shall be the Administrator of this Agreement for the WDFW.

Each Administrator shall assure that all activity/work is performed in accordance with good practice and in compliance with all applicable codes, standards and regulations of any public authority having jurisdiction. Each Administrator shall see to it that all activity/work shall be performed in full compliance with all obligations and responsibilities imposed by any applicable laws or regulations, including but not limited to RCW 39.12.

10. COORDINATION OF ACTIVITIES

The Administrators shall keep themselves and each other apprised of and shall coordinate all activities of a contractor which affect each party during the term of this Agreement.

11. JURISDICTION

Any legal dispute between the parties to this Agreement shall be governed by the laws of the State of Washington.

12. RESPONSIBILITY OF LIABILITY

Nothing in this Agreement or the provision of services or materials pursuant thereto shall create or impose liability on the District or the WDFW for the acts of the other, for facilities or damage to facilities of the other.

13. RECORDS MAINTENCE – AUDIT

- A. WDFW shall maintain books, records, documents and other evidence, which sufficiently and properly reflects all direct and indirect costs expended by it relating to this Agreement. These "records" shall be subject to inspection, review or audit by the District or its authorized representatives, 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 and the Office of the State Auditor, federal auditors, and any persons duly authorized by the District and WDFW shall have full access and the rights to examine any of these materials during this period.
- B. WDFW shall keep and maintain complete and accurate records of its costs and expenses related to the work or this Agreement in accordance with sound and generally accepted accounting principles applied on a consistent basis. WDFW will provide the District a full copy of the annual auditors' report, including all attachments and management letters within thirty (30) days of receipt of the same.

- C. WDFW "records", referenced in Section 12B, shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business hours. Such audits may be performed by the District's representative or an outside representative hired by the District throughout the term of this contract and for a period of six (6) years after final payment.
- D. WDFW shall require all payees to comply with the provisions of this article by including the requirements hereof in a written contract agreement between WDFW and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to subcontractors and sub-subcontractors, material suppliers, etc. WDFW will cooperate fully and cause all Related Parties and all of WDFW subcontractors to cooperate fully in furnishing or in making available to the District from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.
- E. District's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this agreement and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- F. Any adjustments and/or payments which must be made as a result of any such audit or inspection of WDFW invoices or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of District's findings to WDFW.

14. NON-WAIVER

The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, including those relating to compensation or to the exercise of any right herein conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion..

15. ENTIRE AGREEMENT

This instrument embodies the entire Agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

PUBLIC UTILITY DISTRICT NO 2 OF
GRANT COUNTY, WASHINGTON

STATE OF WASHINGTON DEPARTMENT
OF FISH AND WILDLIFE

By: 
Gerry O'Keefe, Director of Natural Resources

By: 
Lee Rolle, Chief Financial Officer

12-1-09
Date

1/21/10
Date