

WDFW
H-1772

INTERLOCAL AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this 21st day of December, 2011, by and between STATE OF WASHINGTON DEPARTMENT OF FISH AND WILDLIFE 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

The District desires to enter into this Agreement to fulfill its requirements relating to the Wildlife Habitat Management Plan as set forth in its Federal Energy Regulatory Commission (“FERC”) License dated April 17, 2008, and FERC Order approving the Wildlife Habitat Management Plan Pursuant to Article 409 on August 31, 2010.

WDFW and the District enter into this Agreement in accordance with the terms of the Interlocal Cooperation Act, RCW 39.34.

NOW THEREFORE, IT IS AGREED THAT:

1. PURPOSE, SCOPE OF SERVICES, AND COMPENSATION

On August 31, 2010 FERC approved the Wildlife Habitat Management Plan pursuant to Article 409. In accordance with paragraph 6 of the Order and the Wildlife Management Plan, the District is required to provide funds to assist WDFW in fire suppression efforts within and adjacent to the Priest Rapids Project. The District shall make contributions to the fund annually on or before February 15th of each year in the not-to-exceed amount of \$40,000. The District has established the Wildlife Management Plan (“WMP”) account. Funds from this account shall be used for: (1) re-vegetating burned areas; (2) re-vegetating areas known to burn frequently with species carrying lesser fuel loads; (3) creating fire breaks in appropriate locations; and (4) paying for firefighting activities.

This Agreement documents the understanding between the parties related to the WMP account.

A. In addition, the District shall:

(i) Annually provide WDFW a summary report of the WMP account, including but not limited to, balances, contributions and withdrawals/reimbursements. Funds not spent in any year remain available in future years.

(ii) Reimburse WDFW, up to the available funds in the WMP account, for the costs incurred by WDFW in performing work identified below, including overhead which is properly allocable at the applicable WDFW standard rate. The District’s reimbursement obligation is limited to funds in the WMP account. District shall make payment to WDFW within thirty (30) days after District’s receipt and approval of invoice. Payment shall not be unreasonable withheld. District may reasonably require WDFW provide information/documentation to support the invoice.

B. WDFW shall:

(i) Use funds from the WMP account for: (1) re-vegetating burned areas; (2) re-vegetating areas known to burn frequently with species carrying lesser fuel loads; (3) creating fire breaks in appropriate locations; and (4) paying for firefighting activities;

(ii) Develop and send to the District an invoice identifying reimbursable expenditures related to (i) above. WDFW shall request reimbursement by invoice at least annually for the previous year's work incurred, and not more than quarterly for years of significant work effort. Invoices shall be sent to the attention of:

Rebecca Henricks, Sr. Contract Officer
Public Utility District No. 2 of Grant County, WA
PO Box 878
Ephrata, WA 98823
Or rhenric@gcpud.org
(509) 754-6750

(iii) On a yearly basis WDFW will provide an annual activities report related to the use of the funds associated with the fire maintenance program, including, but is not limited to, specific activities performed; location/area where activities occurred (maps) and number of areas and acres re-vegetated.

2. DURATION AND TERM

This Agreement shall be effective upon execution by both the District and the WDFW. The Agreement shall remain in force and effect through the term of the existing license and until the District receives a new FERC long-term license or terminates its license. Either party may terminate this Agreement and recover damages in the event of a material breach, provided the defaulting party is given written notice of the breach and a reasonable opportunity within which to cure the breach and fails to do so. Alternatively, the non-defaulting party may pursue any other legal remedies, including specific performance.

3. FILING

Administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, file copies of the Agreement with their respective county auditors or, alternatively, post an electronic copy of the Agreement on the Parties' websites.

4. 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. 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.

5. INSURANCE

WDFW is an agency of the State of Washington and covered by the State's self-insurance liability program as provided by RCW 4.92.130.

6. ASSIGNMENT

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

7. 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.

8. 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.

9. 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.

10. RECORDS MAINTENANCE – 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.

C. WDFW “records”, referenced in this section, 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. 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.

11. ENTIRE AGREEMENT

This instrument embodies the entire Agreement of the parties with respect to the subject matter. 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.

12. NOTICES

Unless otherwise provided herein, all notices given by any Party to the other in connection herewith shall be in writing and shall either be delivered in person, email or by facsimile to the facsimile number listed below with telephonic confirmation. Notice delivered in person shall be deemed to have been properly given and received on the date delivered, so long as delivered during normal business hours. Notice delivered by email shall be deemed to have been properly received on the date and time of the transmission. Notice delivered by facsimile is complete on transmission when made prior to 5:00 p.m. on a business day. Notice delivered by facsimile made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9 a.m. on the first business day thereafter. Notification of changes in the contract administrator or the project administrator must be made in writing and delivered to all other administrators.

Contract Administrators:

Each contract 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.

For District: Rebecca Henricks, Sr. Contract Officer
PO Box 878
Ephrata, WA 98823
rhenric@gcpud.org
(509) 754-6750

For WDFW: Contracts Office, WDFW
Theresa Walker, Contracts Officer
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091
Theresa.Walker@dfw.wa.gov
(360) 902-2439

Project Administrators:

Each project 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.

For the purposes of day to day working relationships, the project administrators are listed below. A party may change its project administrator, and upon so doing, shall give informal notice to the other administrators.

For the District: Tom Dresser
Public Utility District No. 2 of Grant County, WA
PO Box 878
Ephrata, WA 98823
tdresser@gcpud.org
(509) 754-5088 ext. 2312

For WDFW: Pete Lopushinsky
Washington Department of Fish and Wildlife
Wildlife Area Manager
BOX 9000 Tarpiscan Road
Malaga, WA 98828
(509) 663-6260 Work
(509) 663-6260 Mobile

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, WA

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

By: 
Tim, Culbertson, General Manager

By: 

Dec. 22, 2011
Date

1/23/2012
Date