

INTERAGENCY AGREEMENT

**Between
Pacific County
and the**

Pacific Conservation District

**WCRI PROJECT NO. 15-1533R
RUE CREEK SALMON RESTORATION PROJECT
RUE CREEK COUNTY ROAD NO. 47510
AT MP 1.68 (east site) AND MP 2.01 (west site)**

This agreement is by and between Pacific County, P.O. Box 187, South Bend, WA 98586 (hereinafter "the County") and the Pacific Conservation District, a municipal corporation of Washington State, P.O. Box 336, South Bend, WA 98586 (hereinafter "the District").

WITNESS THAT

WHEREAS, the Washington State Legislature funded the Washington Coast Restoration Initiative (WCRI) to support restoration projects and local jobs on the coast, and

WHEREAS, the Pacific Conservation District was established in 1948 to implement natural resource conservation practices within the boundaries of the District, and

WHEREAS, the Pacific Conservation District as the Project Sponsor has executed WCRI Project No. 15-1533R titled Rue Creek Salmon Restoration Project with the Washington State Recreation and Conservation Office, and

WHEREAS, the projects are located on Rue Creek County Road No. 47510 at MP 1.68 (east site) and MP 2.01 (west site), and

WHEREAS, the COUNTY has authority under Washington State Law as set forth in RCW 36.74.020 pertaining to operations of public roads;

NOW THEREFORE, in consideration of covenants, conditions, performance and promises hereinafter contained, the parties hereto agree as follows:

1. PURPOSE

Replace cross culverts on Rue Creek County Road No. 47510.

2. SCOPE OF THE WORK

The DISTRICT has entered into Funding Board Project Agreement (Project Number 15-1533R – Rue Creek Salmon Restoration Project) with the Washington State Recreation and Conservation Office (RCO). The DISTRICT shall be responsible for completing the project deliverables as specified in the Washington Coast Region Lead Entity Scope of Work Template July 1, 2015 – June 30, 2017 (Scope of Work).

The DISTRICT shall:

- Complete the scope of work and project deliverables by the deadlines as described within the Scope of Work. Should it not be possible to meet the deadlines, the DISTRICT shall notify the County and RCO prior to the due date and propose a revised deadline.
- Include the COUNTY in any communication between RCO and the DISTRICT regarding any of the following: Scope of Work, funding or budget, or agreement. This will include forwarding copies of letters, etc., sent from RCO to the DISTRICT.
- Respond promptly to any communication from the COUNTY.

The COUNTY shall:

- Provide crews as necessary to conduct on site survey, and to provide traffic control during design related field investigations.
- Participate as a member of the design team, provide design requirements and review design documents.
- Provide construction inspection services
- Complete any right of way transactions deemed necessary related to the project footprint.
- Respond promptly to any communication from the DISTRICT.

The DISTRICT have begun the design and specification documents for Project No. 15-1533R that includes the removal and replacement of culverts on Rue Creek Road No. 47510 at MP 1.68 and MP 2.01.

The DISTRICT will accomplish all work necessary to coordinate, control, permit, design and construct the project in accordance with Pacific County Standards, Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, the Federal Highway Administration Standards, and AASHTO Standard Specifications for Highway Bridges and any other applicable laws and the following requirements:

PRE-CONSTRUCTION

- Portions of the project are located within a Pacific County right of way and will be constructed in conformance to the County Engineer approved design and specification documents cited in the first paragraph of this section of the AGREEMENT.
- A "Pacific County Public Works Permit to Work in County Right of Way" must be obtained before any such work commences.
- Copies of all required permits associated with public improvements must be provided.
- The project affects utility and infrastructure facilities that are located in the public right of way. Issues relating to the design, construction, coordination

and/or relocation efforts for the effects caused by the project must be adequately resolved before construction will be allowed to begin in the public right of way.

- A set of plans and specifications meeting County requirements must be submitted to the County Engineer for his evaluation and written approval before work may commence.
- Plans and specifications for the public improvement will be designed under the direct supervision of a licensed engineer qualified to perform such work. This design shall conform to the applicable portions and latest editions of (1) County Road Standards, (2) Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, and (3) AASHTO Standard Specifications for Highway Bridges.
 - Important bridge design criteria from these specifications that are noted here for emphasis are:
 - The bridge must be designed to pass a 100-year flood
 - Appropriate seismic analysis is required
 - A scour analysis must be performed
 - Design for bridge foundation elements must be based upon a geotechnical evaluation
 - A load factor rating analysis conforming to the requirements of the Washington State Department of Transportation is required
 - Guardrail end treatments for the approach to the structure must be part of the design. Approach road lengths necessary to connect the new bridge into the existing road at the appropriate design speed (50 mph for flat terrain) will be designed. In no case will the taper length used to transition the new bridge approaches into the existing roadway be less than 100 feet.
 - Additional design requirements
 - Bridge span length shall be greater than 20 feet in order to assure that the structure may be placed on the National Bridge Inventory System
 - Width of the bridge for vehicular traffic shall be a minimum of 26 feet clear "curb face to curb face" (this width is less than that specified in the County Road Standards, however, 26 feet is the width specified by WSDOT for a similar State and Federally funded County bridge project.
 - Concrete will be the material used for the main features of the bridge unless the engineer can demonstrate a superior alternative

- The bridge deck must have a finished wearing course with a 2% crown that is constructed with concrete or asphalt.

CONSTRUCTION

- A copy of up to date "as built" drawings must be kept at the project site at all times during construction.
- Informational notice of road work shall be published in the local publication and posted at the site along with notification to the local residents that may be impacted by the construction.
- DISTRICT representatives must arrange a pre-construction meeting with the project engineer, contractor, County representative, utility representatives and other affected parties before construction will be allowed to begin.
- Proof that the contractor has provided adequate performance and payment security for the project in the amount of the full value of the public improvements portion of the project is required before construction may commence within the County right of way.
- Proof that the contractor has adequate liability insurance (with the County named as additional insured) must be provided before work begins in the public right of way.
- A warranty bond guaranteeing construction of public improvements for two years following final acceptance of these improvements is required.
- Project quality control and material testing must conform to the applicable portions of the Standard Specifications noted above.

POST CONSTRUCTION

- A final walk through must be conducted with the County Engineer, utility representatives and others before public improvements can be considered for acceptance.
- Final acceptance of public improvements must be in writing. Once all requirements are completed, acceptance will be issued in writing.
- A complete set of "as built" drawings must be provided before final acceptance of the public improvement.

3. EVALUATION AND MONITORING

- A. The Conservation District shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this AGREEMENT. The District will retain all books,

records, documents and other material relevant to this AGREEMENT for six (6) years after expiration of this AGREEMENT.

- B. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the DISTRICT with respect to all matters covered in this AGREEMENT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this AGREEMENT. These right shall last for six (6) years after expiration of the AGREEMENT, or from the date final payment hereunder is made, whichever is later.

4. PUBLIC RECORDS ACT

This AGREEMENT and all public records associated with this AGREEMENT shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the DISTRICT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the DISTRICT agrees to make them promptly available to the COUNTY. If the DISTRICT considers any portion of any record provided to the COUNTY under this AGREEMENT, whether in electronic or hard copy form, to be protected from disclosure under law, the DISTRICT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the DISTRICT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the DISTRICT (a) of the request and (b) of the date that such information will be released to the requester unless the DISTRICT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the DISTRICT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the DISTRICT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the DISTRICT for releasing records not clearly identified by the DISTRICT as confidential or proprietary. The COUNTY shall not be liable to the DISTRICT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction. The DISTRICT shall, to the maximum extent permissible by law, hold harmless and indemnify the COUNTY against any third-party claims for the release of records that the DISTRICT did not seek a restraining order or otherwise seek to protect disclosure of confidential or privileged records.

5. FUNDING AND CONTRIBUTIONS

The DISTRICT successfully received a WCRI grant totaling \$962,360, administered through the Washington State Recreation and Conservation Office (RCO) – Prism

Project #15-1533R. The project sponsor is the Pacific Conservation District, sponsor match included in the grant agreement is \$50,000 from Pacific County for a total Agreement of \$1,012,360.

Pacific County will commit a maximum of \$150,000 as match to the project which includes; (1) \$15,000 of donated labor for county engineering work (contract, survey work, traffic control, construction inspection, etc.) and (2) \$135,000 in cash inclusive of the \$50,000 shown as the sponsor match in the DISTRICT's grant agreement with RCO. Prior to reimbursement to the DISTRICT for the cash funding (\$135,000), proof of costs will be presented to the COUNTY for review. The costs will be reviewed by the County Engineer and Accounting Manager and a voucher prepared payable to the DISTRICT for appropriate incurred costs. The COUNTY will submit documentation of donated labor costs to the DISTRICT on a regular monthly basis.

6. EMPLOYMENT RELATIONSHIPS

The DISTRICT, its employees or agents performing under this AGREEMENT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the DISTRICT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the DISTRICT.

7. MUTUAL INDEMNITY

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed official, employees, agents or volunteers.

In the event of any concurrent act or omission of the parties, each party shall pay its proportionate share of any damages awarded. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

8. ENTIRE AGREEMENT

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

9. AGREEMENT MODIFICATIONS

The COUNTY and the DISTRICT may, from time to time, request changes in services being performed under this AGREEMENT. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this AGREEMENT. It is mutually agreed and understood that no alternation or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding. For example and without limitation, an amendment to the AGREEMENT must be approved in writing by the DISTRICT prior to the COUNTY expending funds for the items covered within that amendment. Costs incurred by the COUNTY in contravention of this paragraph are sole responsibility of the COUNTY.

10. AGREEMENT PERIOD

The provisions of this AGREEMENT are to commence on the date executed and shall continue until June 30, 2017. This notice requirement shall not limit either party's ability to terminate this AGREEMENT as per the conditions specified within Section 11.

11. TERMINATION OF AGREEMENT

The DISTRICT and the COUNTY shall each retain the right to terminate this AGREEMENT at any time and for any reason by submitting written notice of its intention to the other party at least thirty (30) days prior to the specified effective date of such termination. In addition, the COUNTY shall have the right to terminate this contract on ten days communicated written notice if the DISTRICT has violated any of the provisions herein, or if the COUNTY deems the DISTRICT'S performance of its responsibilities herein identified to be substantially unsatisfactory. In either event, on the termination of this AGREEMENT, all finished and unfinished documents and work papers prepared by the DISTRICT pursuant to this AGREEMENT shall, at the option of the COUNTY become its property, and the DISTRICT will be paid for services performed up to the date of the AGREEMENT termination. Notwithstanding the above, the DISTRICT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the AGREEMENT by the DISTRICT. The COUNTY may withhold any payment to the DISTRICT for the purposes set forth until such time as the exact amount of damages due to the COUNTY from the DISTRICT is determined.

12. SPECIAL PROVISION

The failure of the COUNTY to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

13. SEVERABILITY

In the event any provision, or any portion thereof, contained in this AGREEMENT is held to unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

14. DISPUTE RESOLUTION

Exempt as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUTNY, a representative appointed by the DISTRICT, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

15. GOVERNING LAW AND VENUE

This AGREEMENT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the State of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this AGREEMENT.

16. COSTS AND ATTORNEY FEES

In the event legal action is brought with respect to this contract, the prevailing party shall be awarded its costs and attorney's fees in an amount to be determined by the Court as reasonable.

17. ADMINISTRATION

The following individuals are designated to co-administer this AGREEMENT. They shall also serve as their respective party's contact person for any and all communications relative to this AGREEMENT.

The District: Mike Nordin
Pacific Conservation District
P.O. Box 336
South Bend, WA 98586

The County: Michael W. Collins, Director/County Engineer
Pacific County, Department of Public Works
211 North Commercial Street
Raymond, WA 98577

Address changes by either party must be provided by written notice to the other in the manner set forth above.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this _____ day of _____ 2016.

BOARD OF PACIFIC COUNTY
COMMISSIONERS

Frank Wolfe, Chair

Lisa Ayers, Commissioner

Steve Rogers, Commissioner

Clerk of the Board

APPROVED AS TO FORM:

Prosecutor's Office WSBA#

PACIFIC CONSERVATION DISTRICT

Mike Nordin