

INTERLOCAL AGREEMENT

Between the

Kittitas County Conservation District, and
Kittitas County
for the Jack Creek and Indian Creek Culvert Replacement Project
Specifying Kittitas County Contributions

This agreement is made and entered into this 2nd day of June, 2009 by and between the following parties:

- 1) the Kittitas County Conservation District, hereinafter referred to as the **District**; and
- 2) Kittitas County, by and through the Kittitas Board of County Commissioners, hereinafter referred to as the **County**.

Recitals:

WHEREAS, the state Interlocal Cooperation Act, RCW 39.34, authorizes cooperative efforts between government entities in the providing of services; and

WHEREAS, the **County** owns the North Fork Teanaway Road intersecting Jack Creek and Indian Creek. Each creek passes under the county road through a seventy two inch diameter corrugated metal culvert. The **County** recognizes the culverts are undersized for the flood flows produced in the Indian Creek and Jack Creek watersheds, and the Indian Creek culvert is damaged and needs replacement. The replacement of these culverts does not rank high enough on the **County's** list of priority project to be completed in the near future; and

WHEREAS, the **County** agreed to make financial contributions to this project when the **County** ratified Commissioner Crankovich's signature on a Partner Project Contribution Form on August 7th, 2007, and by this reference is hereby incorporated into this Agreement as Exhibit B. This form committed an estimated value of \$10,000 per project, totaling an estimated \$20,000 from the **County** to go to certain aspects of the Jack Creek and Indian Creek Culvert Removal Project and was discussed formally in a July 16, 2007 and July 23, 2007 study session; and

WHEREAS, the **County** Department of Public Works was requested to perform certain work described more fully in Exhibit A to be credited from the above-stated financial contribution amount; and

WHEREAS, summer steelhead in the Mid-Columbia region (including the Yakima River basin) and bull trout in the coterminous United states (including Washington) were listed as a threatened species under the Endangered Species Act in 1998; and

WHEREAS, the **District** is authorized by Chapter 89.08 Revised Code of Washington to provide technical and financial assistance in the management of natural resources; and

WHEREAS, the **District** has been working, through the Yakima Tributaries Access and Habitat Program (YTAHP) funded by Bonneville Power Administration (BPA), to assist owners of in-stream structures to voluntarily comply with requirements to remove passage barriers in order to help restore access to habitat for ESA listed species. The YTAHP process has identified the Jack Creek and Indian Creek culverts as barriers to fish passage. Further, YTAHP has identified the replacement of the Jack Creek and Indian Creek culverts as a high priority, early action project in its strategic plan; and

WHEREAS, the **District** has secured both state and federal funding specifically for the replacement of the Jack Creek and Indian Creek culverts through the following sources: Salmon Recovery Funding Board grant #07-1517, Western Federal Lands Division grant #DTFH70-07-E00013, YTAHP, USFWS Partners for Fish and Wildlife Program, and the BPA; and

WHEREAS, the **District** contracted a qualified engineering firm to produce the Designs and Specifications for the culvert replacement project.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Jack Creek and Indian Creek Culvert Replacement Project

- A. Description of work:** As a result of collaborative interactions, the parties to this Agreement developed a plan to improve fish passage at each road/creek intersection by replacing the Jack Creek culvert with an aluminum box culvert and replacing the Indian Creek culvert with an aluminum pipe-arch culvert.
- B. Responsibilities of parties:**
 - 1.) During Construction process:**
 - a. The final designs and specifications have been made available for the new infrastructure improvement and have been reviewed and approved by the parties.
 - b. The **County** agrees to perform the services described in Exhibit A and be credited a maximum equal to the agreed upon contribution amount of \$20,000. The **County** acknowledges that time is of the essence in the performance of their agreed upon services. The **County** agrees to track their expenses continually during the construction project. Upon request the **County** shall update the **District** as to the amount remaining in the **County's** \$20,000 contribution. The **County** agrees to notify the **District** as soon as the **County** becomes aware of a discrepancy in the cost of the services provided by the **County** and the agreed upon **County** contribution. In the event the value of **County** services exceeds \$20,000 the **County** agrees to perform the work noted in Exhibit A for no additional compensation.
 - c. The **County** agrees to be present at the Pre-Construction conference and any scheduled progress meetings as deemed necessary by the **District**. The progress meetings may be as frequent as once a week.
 - d. The **County** acknowledges the authority structure described in contract clause #1 on page 21 of final designs and specifications. All communications to the contractor shall be routed through the **District**.
 - e. The **County** shall provide the construction staking for the contractor as described in Exhibit A.

- f. The **County** shall review the Diversion Road Design and Construction Work Plan submitted by the contractor as described in **Exhibit A**. The **County** shall issue an acceptance or rejection of the Diversion Road Design and Construction Work Plan based on the **County's** review.
- g. The **County** shall inspect and make the final determination of any material to be reused within the county road prism.
- h. The **County** shall provide the **District** a list of critical inspection needs during the construction and installation process. This list shall include inspections performed by the **County** and inspections performed by the **District**. This list shall be available at the Pre-Construction conference.
- i. The **County** shall provide assistance and guidance to the **District** staff as needed while the **District** staff performs inspections.
- j. The **District** shall ensure all applicable permits are obtained prior to construction.
- k. The **District** has bid this project out and vouches safe to the **County** that the **District** has comported to all public works bidding and construction procedures. The **District** will defend, indemnify and hold harmless the **County** from all loss and expense including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from the **District's** breach of this provision.
- l. The **District** shall pay all construction costs from grant proceeds. The **County** shall NOT be responsible for any system construction monetary costs incurred under this Agreement. The **County** may wish to fulfill their \$20,000 agreed upon contribution amount by providing cash to the **District** to pay for construction costs. Upon completion of the project, if the **County** has fulfilled its duties under Exhibit A and is under the maximum \$20,000 project partner contribution amount, the **County** will not give the **District** the remaining difference in either cash or services.
- m. The **District** shall provide funding to complete construction up to the current available funding from the Salmon Recovery Funding Board, Bonneville Power Administration, Western Federal Lands Division, USFWS Partners for Fish and Wildlife, and the Yakima Tributaries Access and Habitat Program.
- n. The **District** shall manage the construction contract and keep all parties informed of progress throughout the construction period.
- o. Upon project completion, the **District** shall provide "as-built" plans to the **County**.

2.) During Operation and Maintenance Periods Following Construction:

- A. **Period of Performance.** The period of performance of this Agreement shall commence upon signature by all parties and be completed at final acceptance of the Jack Creek and Indian Creek Culvert Replacement Project.
- B. **Facility Ownership.** Upon final acceptance the **County** shall assume ownership and all maintenance responsibilities of the culverts and repaired section of North Fork Teanaway Road.
- C. **General Provisions**
 1. **Successors And Assigns:** **District** and the **County**, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither the **District** or the **County** will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other parties hereto.

2. **Effective Date-Amendments-Termination.** This Agreement shall be effective from the date of the last Party to sign and termination shall occur automatically at the end of the period of performance unless renewed, amended, supplemented, terminated, or superseded by mutual written consent of the Parties thereto.
3. **Compliance with State Law.** Compliance with this agreement does not exempt any party from compliance with Washington State law, including laws regarding fish passage.
4. **Attorneys' Fees.** In the event of any litigation for the interpretation or enforcement of this Agreement, the prevailing Party shall be entitled to recover from the Party against whom the litigation was initiated, an amount equal to its reasonable expenses, costs, and reasonable attorneys' fees incurred in connection therewith.
5. **Invalidity.** In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.
6. **Legal Relationships.** No employment, agency, partnership, joint venture or joint undertaking relationship shall be construed from this Agreement, and except as herein specifically provided, no Party shall have the right to make any representation for, act on behalf of, or be liable for the debts or legal obligations of any party. No third party is intended to be benefited by this Agreement.
7. **Entire Agreement.** All understandings and agreements previously existing between the Parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, no party relying upon any statement or representation made by the other not embodied herein.
8. **Interpretation.** This Agreement has been reviewed by all the Parties and each Party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such Party desired. No stricter construction or interpretation of the terms hereof shall be applied against any Party as the drafter hereof.
9. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the Parties.
10. **Indemnification.** Each party shall defend, indemnify and hold harmless the other, as well as its officers, agents and employees, from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract to the fullest extent permitted by law, whether arising from contract liability(ies) or otherwise.

This duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of the County, the District, or their respective officers, agents and employees.

This duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the County's, and the District's agents or employees shall apply only to the extent of negligence of the County's, and the District's agents, employees, subcontractors and suppliers.

Both parties specifically and expressly waive any immunity that may be granted under the Washington State Industrial Act, Title 51, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

This duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by the County, the District, or their respective officers, agents and employees.

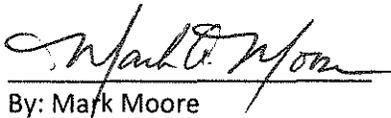
The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

11. **Appendices.** All appendices referenced in this Agreement are incorporated within it.
12. **Condition.** This Agreement is conditioned upon receiving the necessary funding to implement the actions identified herein.
13. **Governance:** This contract is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. Venue of any action brought to interpret or enforce the terms of this Agreement shall be in the Superior Court of Kittitas County, Washington.
14. **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 unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.
15. **Notices.** Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the day after transmission) to the Parties' addresses set forth as follows:
 - a. Kittitas County Conservation District, attn: _____, 607 E. Mountainview Avenue, Ellensburg, WA 98926;
 - b. Kittitas Board of County Commissioners, attn: _____, 205 W 5th AVE Suite 108, Ellensburg, WA 98926.

Any party may change its address for notice by providing the other parties notice of such change in accordance with the terms of this section. All notices required by this section which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt or three (3) days after deposit thereof in the U.S. mail.

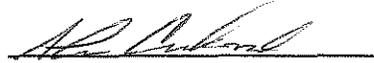
- 16. **Administrator.** Subject to the division of responsibilities mentioned above the administrator for this contract will be the **County Engineer.**
- 17. **Property.** Unless otherwise specifically agreed by the parties in writing, all property, personal and real, utilized by the parties hereto in the execution of this Agreement shall remain the property of that party initially owning it.
- 18. **Filing.** Pursuant to RCW 39.34.040, this Agreement shall be posted on the County's public website.

IN WITNESS WHEREOF, the parties have executed this Agreement.



By: Mark Moore
Title: Chairman, Kittitas County Conservation District

Date: 5/22/09

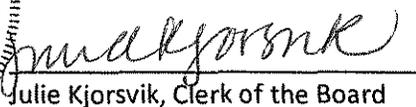


By: Alan Crankovich
Title: Chairman, Kittitas Board of County Commissioners

Date:



ATTEST:


Julie Kjorsvik, Clerk of the Board

Approved as to form:

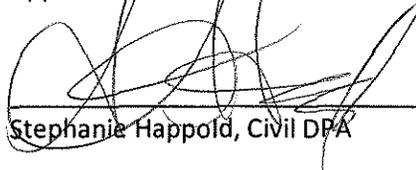

Stephanie Happold, Civil DPA

Exhibit A**Kittitas County Services provided during the construction of the Jack Creek and Indian Creek Culvert Replacement Project.**

Service Item #	Description of Service	Unit of Measure for crediting the agreed upon contribution amount
1	Provide the Pre Construction Staking and Post Construction Field Survey as described on page 3 of Addendum #1 to the plans and specifications.	Hours of staff and equipment time to perform the work.
2	Attend any Pre-Construction Conference or progress meeting.	Hours of staff and equipment time.
3	Review of Diversion Road Design and Construction Work Plan.	Hours of staff time.
4	Inspection and final determination of any material to be reused within the county road prism. This is in reference to the bid item - Reuse of Existing Excavation Material.	Hours of staff and equipment time.
5	Provide to the District a list of critical inspections that need to take place. This list shall include inspections that the County would like to perform and inspections that the District will perform. On inspections that the District performs the County will provide assistance and guidance to the District staff in performing the inspections if needed.	Hours of staff and equipment time.
6	Review and Comment of Overall Design.	Hours of staff and equipment time.

Exhibit B

Project Partner Contribution Form	
Project Partner: Kittitas County	
Partner Address: 205 W 5 th , Ste. 108, Ellensburg, WA 98926	
Contact Person	
<input checked="" type="checkbox"/> Mr.	<input type="checkbox"/> Ms. Title
First Name: Alan	Last Name: Crankovich
Contact Mailing Address: 205 W 5 th , Ste. 108, Ellensburg, WA 98926	
Contact E-Mail Address: alan.crankovich@co.kittitas.wa.us	
Description of contribution to project: Staff time to review designs and assist with project management and construction oversight; and traffic control.	
Estimated value to be contributed: \$20,000 (10,000 PER PROJECT)	
 Partner's signature	<u>7/23/07</u> Date

Project Applicant Information
Project Name: Indian Creek and Jack Creek Culvert Replacement Project
Project Applicant Contact Information:
<input type="checkbox"/> Mr. <input checked="" type="checkbox"/> Ms. Title
First Name: Anna Last Name: Lael
Contact Mailing Address: 607 E Mountain View, Ellensburg WA 98926
Contact E-Mail Address: a-lael@wa.nacdnet.org
Lead Entity Organization: Yakima River Subbasin Fish & Wildlife Recovery Board