

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
AND KALISPEL TRIBE OF INDIANS FOR
TROUT HABITAT RESTORATION PLAN SUPPORT**

This Interlocal Cooperation Agreement (the "Agreement") is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON (the "District") and the KALISPEL TRIBE OF INDIANS ("Tribe"). The District and the Tribe are herein referred to each individually as a "Party" and collectively as the "Parties."

RECITALS

- A. The District is a public utility district and municipal corporation organized under Title 54 RCW.
- B. The Tribe is a sovereign Indian nation recognized as such by the Federal government.
- C. The District and the Tribe are "Public Agencies" authorized to exercise the authority granted by RCW 39.34 (the Interlocal Cooperation Act).
- D. The District may enter into an Interlocal Agreement with the Tribe to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The Parties desire that the Tribe will perform, or cause to be performed, various tasks required to support the District in activities required under the District's Trout Habitat Restoration Plan ("THRP") for FERC Project No. 2042 (Box Canyon Hydroelectric Project, or the "Project"), as described below in the Scope of Work and in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein, the mutual benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Term. This Agreement will become effective upon execution by both Parties and shall remain in effect until the earlier of: (a) the date on which the Parties mutually agree to terminate this Agreement; (b) upon 30-days' written notice of termination by either Party; or (c) a Party breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice of breach provided by the other Party. The date on which this Agreement terminates shall be referred to herein as the "Termination Date."
2. General Purpose. The purpose of this Agreement is for the Tribe to assist the District with its THRP implementation, which includes but is not limited to subbasin assessments, project development, and exotic species removal and native fish supplementation, revisions to the Pend Oreille Salmonid Recovery Team Lead Entity recovery strategy and the development of items produced by the strategy update process. Several elements of the updated local recovery strategy, when completed, are necessary for and will be incorporated in full or in part into the Downstream Fishway Baseline Condition Report and the THRP comprehensive plan for the Project. All Services performed by the Tribe hereunder shall be directed by, and performed consistent with, Task Orders as described in Section 3.
3. Scope of Work. The Tribe agrees to perform various tasks required to support the District in activities required under the THRP for the Project (the "Services"). The Tribe shall perform the Services as needed and as directed by the District through the issuance of Task Orders using the following process:

- a) The District, with assistance from the Tribe, shall prepare written Task Orders specific to the task or project under this Agreement. Each Task Order shall identify the specific scope of work, timeline, and cost terms for the associated project or task.
 - b) The Parties shall both execute a Task Order before the Tribe is authorized to commence any Services under that Task Order.
 - c) The Tribe shall complete the Services described in the Task Order to the District's satisfaction.
 - d) Task Order No.1 pursuant to this Agreement is attached hereto as Appendix B. Any subsequent Task Orders pursuant to this Agreement shall be attached as additional appendices hereto.
4. Compensation. The District shall pay the Tribe for services rendered and costs actually incurred, as invoiced by the Tribe in accordance with the terms of each Task Order. The Tribe shall submit monthly invoices to the District for work completed through the date of the invoice. Unless otherwise stated, payment to the Tribe shall be made within thirty (30) days of receipt and approval of an invoice from the Tribe.
5. Personnel and Professional Services. The Tribe represents that its services to be performed under this Agreement will be performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality, and that such services will be performed by qualified professionals. The Tribe represents that it has, or will secure at its own expense, all personnel required in order to perform under this Agreement. Such personnel shall not be employees of, or have any contractual relationship to, the District. All services required hereunder will be performed by the Tribe or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state, and local law to perform such Services. The Tribe will provide all materials, supplies, tools, equipment, labor, and other services necessary or reasonably inferable for or incidental to the completion of the Scope of Work. If the Tribe utilizes subcontractors or other third parties to accomplish the Services hereunder, the Tribe shall select such subcontractors using the same competitive bidding requirements and processes that would apply to the District if the District were procuring such work directly. For a period of six (6) years following the Termination Date of this Agreement, the Tribe shall keep all records of its subcontractor procurement processes, and make such records available to the District upon request, for the District and its auditors to ensure compliance with this provision.
6. Insurance. Before the Tribe commences work under this Agreement, a Certificate of Insurance with associated endorsement verifying that the Tribe has insurance to the following limits and listing the District as an additionally insured must be on file with the District:
- a. Workers' Compensation and Employer's Liability Insurance in accordance with applicable laws relating thereto;
 - b. Commercial General Liability Insurance on an occurrence basis with a single limit of not less than One Million Dollars and Zero Cents (\$1,000,000.00); and
 - c. Commercial Automobile Liability Insurance on an occurrence basis of not less than One Million Dollars and Zero Cents (\$1,000,000.00) combined single limit or equivalent for both injury and property damages as a result of any one occurrence including coverage for owned, hired, and non-owned automobiles.
7. Tax. Each Party will be responsible for paying any taxes it owes under federal and state law.
8. Public Relations. The Tribe agrees that complaints received from property owners or public authorities, which relate to the performance of this Agreement by the Tribe, will receive the Tribe's immediate attention. All such complaints and any actions taken (or to be taken) shall be reported to

the District within twenty-four (24) hours. The Tribe shall use its best efforts to promptly respond to and/or settle (without obligation to the District in any way) all complaints received by the Tribe from third parties arising out of or in connection with the completion of the Scope of Work. In handling complaints, the Tribe shall use its best efforts to maintain and promote good public relations for the District. All work shall be done, and all contacts with customers handled, with due respect and consideration for the public.

9. Relationship of the Parties. The relationship of the Tribe to the District shall be that of an independent contractor rendering professional services. The Tribe shall have no authority to execute contracts or to make commitments on behalf of the District, and nothing contained herein shall be deemed to create a partnership, joint venture, or establish a relationship of employer and employee or principal and agent between the District and the Tribe.
10. No Separate Entity Created. For purposes of RCW 39.34.030, the Parties agree that (a) no separate legal or administrative entity is created by this Agreement; (b) each Party shall appoint one or more representatives to communicate with the representative(s) of the other Party and coordinate performance of the Services under this Agreement; and (c) the Parties shall not jointly acquire, hold, or dispose of real or personal property under this Agreement.
11. Manner of Financing. For purposes of RCW 39.34.030(3)(d), the Parties agree that the Services performed by the Tribe under this Agreement, and paid for by the District, shall be financed by the District through its annual budget process, and shall be subject to the availability and appropriation of funds by the District's Board of Commissioners.
12. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements between them, whether oral or written. This Agreement may not be modified or amended, nor may any term or provision hereof be waived or discharged, except in writing which is signed by the Party or Parties against whom such amendment, modification, waiver or discharge is sought to be enforced.
13. Compliance with Applicable Laws. In performing its services under this Agreement, the Tribe shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state, tribal, and local governments.
14. Severability. In the event any provision of this Agreement is held to be invalid and unenforceable by a court of competent jurisdiction, the remaining provisions shall be valid and binding upon the Parties.
15. Survival of Terms. Whenever required to give meaningful effect to provisions in this Agreement, such provisions shall continue in effect after the expiration or termination of this Agreement, including but not limited to providing for final billings and adjustments related to the period prior to expiration or termination.
16. No Waiver. No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement shall not constitute a waiver or estoppel of such right, remedy, power, or privilege.

17. Persons Bound and Assignments. The terms of this Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors, subrogees, assigns, agents, employees, shareholders, officers, directors, parent, subsidiaries, affiliates, partners, heirs and associates. The Tribe shall not assign, delegate, or otherwise transfer its obligations under this Agreement without the written consent of the District, which consent may be withheld for any reason whatsoever. Any attempted assignment without the consent of the District shall be null and void and of no effect.
18. Governing Law; Dispute Resolution. In the event of any dispute between the District and the Tribe arising from this Agreement, the terms of this Agreement shall control. This Agreement, and all matters arising out of or relating to this Agreement, shall be interpreted and enforced according to the laws of the State of Washington, without giving effect to the conflict-of-laws provisions thereof.

The Parties each agree to make a good-faith effort to resolve, without resort to litigation, any dispute according to the procedures set forth herein; *provided, however*, no term or form of informal dispute resolution shall be a prerequisite to a Party instituting an action to enforce or defend its rights under this Agreement. If the dispute cannot be resolved, then the Parties may elect to pursue whatever rights they may have at law or equity consistent with Section 19 below.

19. Limited Waiver of Sovereign Immunity. The District understands and acknowledges that the Kalispel Tribe of Indians enjoys sovereign immunity from suit and nothing in this Agreement shall be construed as a general waiver of this immunity from suit; *provided, however*, that the Tribe hereby provides a limited waiver of its sovereign immunity to the District for all claims arising from this Agreement. The Tribe hereby grants to the District a limited waiver of sovereign immunity and consents to the exclusive jurisdiction and venue of Pend Oreille County Superior Court for all claims arising from this Agreement. In no instance shall any enforcement of any kind be allowed against any Tribal real property, and the Tribe's total liability for each claim arising under this Agreement shall not exceed the policy limits of the Tribe's comprehensive general liability insurance, which shall be no less than One Million Dollars and Zero Cents (\$1,000,000.00). This limited waiver is applicable only to the District and does not apply to actions by third parties or disputes not arising from this Agreement. Attached hereto as **Appendix A** is the KTI Tribal Business Committee Resolution approving the limited waiver of sovereign immunity.
20. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. There shall be no express or implied third-party beneficiary of this Agreement. No entity or person, other than the Parties, shall have the right to enforce any right under this Agreement.
21. Preparation. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting, or execution hereof.
22. Notifications. All written notices, demands, or requests required by this Agreement shall be considered effective: (i) the same day when sent by email with delivery confirmation; or (ii) two business days following the date sent by certified U.S. mail, postage prepaid, or by certified overnight delivery service. All notices, demands, or requests required by this Agreement shall be addressed as follows:

| To District | To Tribe |
|--|---|
| PUD No. 1 of Pend Oreille County Attn: General Counsel P.O. Box 190 130 N. Washington Ave. Newport, WA 99156 By Email: notices@popud.org With copy to: information@popud.org | Kalispel Tribe of Indians Attn: Legal Office 934 S. Garfield Rd. Airway Heights, WA 99001 By Email: smannakee@kalispeltribe.com |

- 23. Calculation of Time. If any time period specified herein expires on a Saturday, Sunday, or legal holiday, such time period shall be automatically extended through the close of business on the next regular business day.
- 24. Headings. The headings of the sections of this Agreement are inserted solely for the convenience of the Parties, and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.
- 25. Counterpart Signatures. The Parties may execute this Agreement, and any modification to this Agreement, in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year last written

below Signed by:

John Janney
D8C40F2A3A024BD...
 Public Utility District No. 1
 of Pend Oreille County

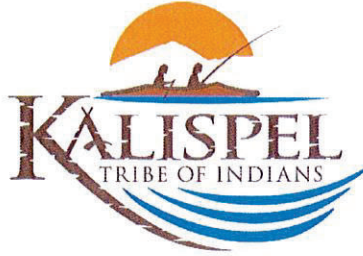
Allen Neneem
 Kalispel Tribe of Indians

By: John Janney
 Title: General Manager
 Date: 4/17/2024

By: Allen Neneem
 Title: Chairman
 Date: 3-12-24

Exhibit A

KALISPEL RESOLUTION NO. 2024- 52



KALISPEL TRIBAL COUNCIL
KALISPEL INDIAN RESERVATION
USK, WASHINGTON 99180

MEMORANDUM:

TO: Kalispel Business Committee

FROM: Deane Osterman

SUBJECT: Interlocal Cooperation Agreement with Pend Oreille County Public Utility District No.1 for Trout Habitat Restoration Plan Support ("PUD Interlocal THRP Agreement")

COUNCIL ACTION: APPROVE THE PUD INTERLOCAL THRP AGREEMENT AND AUTHORIZE THE CHAIRMAN OF THE KALISPEL BUSINESS COMMITTEE OR HIS DESIGNEE TO EXECUTE IT.

MOTION: CURT HOLMES

SECOND: SONNY BIGSMOKE

COUNCIL MEMBERS

| | (YES) | VOTE (NO) | ABSTAIN |
|-----------------------|-------------------------------------|--------------------------|--------------------------|
| <u>Curt Holmes</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Sonny Bigsmoke</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Rodney Monroe</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

COUNCIL ACTIONS:

SIGNED: Glen Hansen

FOR: 3 AGAINST: 0

ABSTAINED: _____

FOR: 3

AGAINST: 0

DATE: 3.12.24

20240312.04



P.O. Box 39
Usk, WA 99180
509 445-1147
509 445-1705 fax

kalispeltribe.com

RESOLUTION

WHEREAS, the Kalispel Business Committee is the duly constituted governing body of the Kalispel Tribe of Indians (the “Tribe”) by the authority of the Constitution and By-Laws of the Tribe; and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Kalispel Business Committee is charged with the duty of protecting the health, security, and general welfare of the Tribe and all Reservation residents; and

WHEREAS, this duty includes protection of the Tribe’s aboriginal lands and lifeways, and managing the Tribe’s natural resources for the benefit of future generations of Kalispel people; and

WHEREAS, the Tribe desires to enter into the attached Interlocal Cooperation Agreement with Pend Oreille County Public Utility District No.1 for Trout Habitat Restoration Plan Support (“PUD Interlocal THRP Agreement”), which will enable the Tribe to further its conservation work on behalf of current and future generations of Tribal members; and

WHEREAS, as a condition of executing the PUD Interlocal THRP Agreement, the PUD requires a limited waiver of the Tribe’s sovereign immunity, to wit:

“The Tribe hereby grants to the District a limited waiver of sovereign immunity and consents to the exclusive jurisdiction and venue of Pend Oreille County Superior Court for all claims arising from this Agreement. In no instance shall any enforcement of any kind be allowed against any Tribal real property, and the Tribe’s total liability for each claim arising under this Agreement shall not exceed the policy limits of the Tribe’s comprehensive general liability insurance, which shall be no less than One Million Dollars and Zero Cents (\$1,000,000.00). This limited waiver is applicable only to the District and does not apply to actions by third parties or disputes not arising from this Agreement.”; and

WHEREAS, in light of these restrictions, the Kalispel Business Committee finds that the benefits of the PUD Interlocal THRP Agreement outweigh the potential risks of the limited waiver of the Tribe’s sovereign immunity contained therein.

20240312.04



NOW, THEREFORE, BE IT RESOLVED, pursuant to its authority under Chapter 35 of the Kalispel Law and Order Code, the Kalispel Business Committee hereby approves the attached PUD Interlocal THRP Agreement and authorizes the Chairman of the Business Committee or his designee to execute it.

CERTIFICATION

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 12 day of MARCH, 2024, at the Tribal office on the Kalispel Indian Reservation near Usk, Washington, with the required quorum present by a vote of 3 FOR and 0 AGAINST.

Glen Nenema
GLEN NENEMA, CHAIRMAN
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2026)

Nick Pierre for:
NICK PIERRE, SECRETARY
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2025)

20240312.04

Appendix B

TASK ORDER NO. 1 TROUT HABITAT RESTORATION PLAN SUPPORT ILA - KALISPEL TRIBE OF INDIANS

In accordance with the Interlocal Cooperation Agreement dated April 4, 2024, (“Agreement”) between Public Utility District No. 1 of Pend Oreille County (the “District”) and Kalispel Tribe of Indians (“Tribe”) (collectively the “Parties”), the Parties agree to the terms of this Task Order No. 1 as follows:

Both Parties agree to the following Work, Term, and Compensation, all of which will be conducted as an individual Task Order of the Agreement and will be subject to all terms and conditions of the Agreement.

1. Work to be Provided by the Tribe. The Tribe agrees to perform the following for the District: Pend Oreille Lead Entity Strategy Update for use by the District in further development of the THRP Comprehensive Plan and target species Baseline Condition Report as outlined in the following Scope of Work.

Scope of Work: The Tribe shall complete/provide the following Items under Task order No 1:

Item 1. Revise and update the list of habitat improvement projects that were identified in the 2007 Strategy.

Item 2. Collect, summarize, and update all known Priority Species population, range, and condition data from available sources for each subbasin and the mainstem reservoirs, create an inventory of all provided data sets and documents, as well as verbal communications to document the source for updates.

Item 3. Development of updated Priority Species distribution maps (Strategy Figures B, C and D) (all developed map products must be incorporated into the plan and available as GIS compatible formats for use in other related documents).

Item 4. Development of new subbasin maps (Strategy Figures G-T) for all high and medium priority subbasins. With overlays for Priority Species presence and abundance information, all manmade and natural barriers, brook trout presence/absence, proposed projects (including remaining original project list and new subbasin assessment lists), completed projects and all new and ongoing non-native eradication areas.

Item 5. Update Strategy Figure U (fish passage barriers), Appendix E (Priority barriers) and Table 4 (Priority Actions and Areas)

Item 6. Development of a list of sources used to produce subbasin summaries

Item 7. Development of a list of areas/reaches within the priority subbasins with no fish distribution or abundance data, if any.

Item 8. Incorporate the findings and recommendations from the LeClerc, Ruby, Cedar, Mill, and Skookum watershed assessments into all applicable sections, figures and tables in the Strategy document.

2. Term. All Task Order Work is to be completed by April 15, 2024. This Task Order encompasses services that have been performed/completed prior to the effective date of the Agreement.
3. Compensation. The Tribe shall be paid for the Task Order Work performed in accordance with the Agreement with a not-to-exceed amount of \$10,000.
4. No Other Modifications. This Task Order No. 1 shall not modify or amend the Agreement in any way other than as specifically identified herein.

IN WITNESS WHEREOF, the Parties have executed this Task Order No. 1 as of the date and year last written below.

DocuSigned by:
John Janney
D8C40F2A3A024BD...
Public Utility District No. 1
of Pend Oreille County

By: John Janney
Title: General Manager
Date: 4/17/2024

Glen Nenema
Kalispel Tribe of Indians

By: Glen Nenema
Title: Chairman
Date: 3-12-24