

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY  
AND WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE 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 WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE (“WDFW”). The District and the WDFW 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 WDFW is an agency of the State of Washington dedicated to the management of fish, wildlife, and natural habitats.
- C. The District and the WDFW 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 WDFW to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The WDFW may enter into this Agreement pursuant to its Charter, By-Laws, Rules and Procedures to perform the activities set forth in this Agreement.
- F. The Parties desire that the WDFW 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 WDFW 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 WDFW hereunder shall be directed by, and performed consistent with, Task Orders as described in Section 3.

3. Scope of Work. The WDFW agrees to perform various tasks required to support the District in activities required under the THRP for the Project (the “Services”). The WDFW 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 WDFW, 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 WDFW is authorized to commence any Services under that Task Order.
  - c) The WDFW shall complete the Services described in the Task Order to the District’s satisfaction.
  
4. Compensation. The District shall pay the WDFW for services rendered and costs actually incurred, as invoiced by the WDFW in accordance with the terms of each Task Order. The WDFW shall submit monthly invoices to the District for work completed through the date of the invoice. Unless otherwise stated, payment to the WDFW shall be made within thirty (30) days of receipt and approval of an invoice from the WDFW.
  
5. Personnel and Professional Services. The WDFW 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 WDFW 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 WDFW 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 WDFW 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 WDFW utilizes subcontractors or other third parties to accomplish the Services hereunder, the WDFW 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, including but not limited to rules and procedures as required by Chapter 39.26 RCW. For a period of six (6) years following the Termination Date of each Task Order, the WDFW shall keep all records of its subcontractor procurement processes under that specific Task Order, 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 WDFW commences work under this Agreement, a Certificate of Insurance with associated endorsement verifying that the WDFW 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 WDFW agrees that complaints received from property owners or public authorities, which relate to the performance of this Agreement by the WDFW, will receive the WDFW'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 WDFW 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 WDFW from third parties arising out of or in connection with the completion of the Scope of Work. In handling complaints, the WDFW 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 WDFW to the District shall be that of an independent contractor rendering professional services. The WDFW 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 WDFW.
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 WDFW 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 and any Task Orders issued under it constitute 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 WDFW 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 WDFW 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 WDFW 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. 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.


20. 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.

21. 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:

<b>To District</b>	<b>To WDFW</b>
Pend Oreille PUD Attn: John Janney, General Manager P.O. Box 190 130 N. Washington Newport, WA 99156  By Email: <a href="mailto:jjanney@popud.org">jjanney@popud.org</a> With a copy to: <a href="mailto:notices@popud.org">notices@popud.org</a>	Washington State Dept of Fish and Wildlife Attn: Contracts & Purchasing Manager PO Box 43135 Olympia, WA 98504-3135  By Email: <a href="mailto:contractspurchasing@dfw.wa.gov">contractspurchasing@dfw.wa.gov</a>

- 22. 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.
- 23. 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.
- 24. 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

DocuSigned by:  
  
 \_\_\_\_\_  
 Public Utility District No. 1  
 of Pend Oreille County

\_\_\_\_\_  
 Washington State Department of Fish  
 and Wildlife

By: John Janney  
 Title: General Manager  
 Date: 10/14/2024

By: Jeffrey R. Hugdahl  
 Title: Contracts and Purchasing Manager  
 Date: \_\_\_\_\_

Digitally signed by Jeffrey R. Hugdahl  
 Date: 2024.10.11 14:50:27 -07'00'