

INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN KITTITAS COUNTY AND
KITTITAS COUNTY CONSERVATION DISTRICT

FOR PARTICIPATION IN THE MANASTASH CREEK
CORRIDOR HABITAT ENHANCEMENT AND
FLOOD HAZARD REDUCTION PLAN

THIS AGREEMENT is made and entered into this 5th day of June, 2012, between KITTITAS COUNTY ("the County"), a political subdivision of the State of Washington, and the KITTITAS COUNTY CONSERVATION DISTRICT ("the District"), a political subdivision of the State of Washington.

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in chapter 39.34 of the Revised Code of Washington ("RCW"), provides for public agencies to enter into agreements for joint or cooperative action authorized under that chapter;

WHEREAS, the County and the District are public agencies within the meaning of chapter 39.34 RCW;

WHEREAS, chapter 89.08 RCW specifically provides for the District to enter into interlocal agreements;

WHEREAS, the District is conducting the Manastash Creek Corridor Habitat Enhancement and Flood Hazard Reduction Plan ("the project"), that seeks to identify opportunities to improve aquatic habitat and reduce flood hazards.

WHEREAS, the County wishes to participate and be entitled to utilize the data, summaries, and conclusions (etc.) from the project which will identify factors within Manastash Creek that limit salmonid productivity; identify opportunities to protect and restore dynamic fluvial and landscape processes that will sustain healthy salmonid populations and improve water quality; identify opportunities to reduce flood and erosion damage to private property and public infrastructure; while engaging landowners, resource managers, and others in collaborative efforts that contribute to the success of restoration and flood protection efforts;

WHEREAS, the County and the District seek to use the outcome of this project which will be a focused strategy and a list of viable projects that can be cooperatively or separately implemented to improve aquatic habitat and reduce the impacts of flooding and erosion along Manastash Creek;

WHEREAS, the project is being conducted because Manastash Creek has been designated as critical habitat for the Mid-Columbia Summer Steelhead, a species listed as “threatened” under the Endangered Species Act (ESA).

WHEREAS, the District has been actively working with the local agricultural community to improve habitat conditions and avoid or minimize potential impacts associated with agriculture practices along the lower six miles of the stream. This work is nearing an end as there is only one large fish passage barrier remaining, and it is slated for removal in the next two years.

WHEREAS, the County and the District are interested in the successful conclusion of the project as it is also being undertaken because flood and erosion damage continues to adversely impact private property and public infrastructure in the Manastash watershed. For years, flood damage reduction activities have taken place in an ad hoc fashion often with little regard for potential impacts on habitat.

WHEREAS, the County and the District desire the project to provide a comprehensive strategic plan which is needed to implement projects that will reduce flood and erosion damage while preserving or enhancing aquatic habitat.

WHEREAS, the County has funds available and the District has acquired significant funding for the project from the State of Washington Salmon Recovery Funding Board (SRFB) and the Washington State Conservation Commission;

WHEREAS, the District has assembled a Technical Committee and a Landowner Committee to participate in the project;

WHEREAS, it is in the public interest and in the mutual interest of the parties for the County, in return for stated consideration to the District, to participate in the project;

NOW, THEREFORE, the parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to acknowledge and facilitate the parties’ mutual interest in completing the project.
2. ADMINISTRATION. No new separate legal or administrative entity is created to administer the provisions of this Agreement.
 - a. The District’s point or contact for purposes of this Agreement shall be as follows:

Anna Lael, District Manager
Kittitas County District
607 E. Mountain View

Ellensburg, WA 98926
Phone: (509) 925-8585
Fax: (509) 925-8591

- b. The point of contact for the Kittitas County shall be the Director of Public Works as follows:

Kirk Holmes
Kittitas County Public Works
411 N Ruby ST, Suite 1
Ellensburg WA 98926
Phone: (509) 962-7523
Fax: (509) 962-7663

3. SCOPE. This agreement contemplates that the District will: (a) be the sole contracting agency for the consulting services needed to implement the project scope (Attachment A); (b) facilitate the Technical Committee and Landowner Committee; and (c) coordinate and administer all funding for the project implementation. This agreement further contemplates that the County will: (a) assist with facilitation of the Technical Committee and Landowner Committees; and (b) provide funding to further the goals of the project.
4. COMPENSATION BY THE COUNTY TO THE DISTRICT.
- a. The County will reimburse the District for costs associated with implementing the scope of work (Attachment A), **not to exceed \$40,000.**
- b. Allowable costs shall include the following:
- i. Consultant fees incurred as part of the project implementation contemplated to constitute 20% of the total cost of the project subject to the noted "not to exceed" amount.
- c. Payment by the County to the District shall be made within thirty (30) days after billing by the District which will equal the above noted percentage of invoices the District has received from the consulting services provider(s).
5. DURATION OF AGREEMENT – TERMINATION. This Agreement shall remain in force until cancelled by either party in writing. The District reserves the right to cancel this Agreement in the event of the County's nonpayment of reimbursable costs billed by the District to the County, upon thirty (30) days written notice by the District to the County, sent certified mail, return receipt requested.

6. RELATIONSHIP OF THE PARTIES. No agent, employee or representative of the County shall be deemed to be an agent, employee or representative of the District for any purpose, and the employees of the County are not entitled to any of the benefits the District provides to District employees. No agent, employee or representative of the District shall be deemed to be an agent, employee or representative of the County for any purpose, and the employees of the District are not entitled to any of the benefits the County provides to County employees.
7. NON-DELEGATION / NON-ASSIGNMENT. Neither party may delegate the performance of its contractual obligation hereunder to a third party, unless mutually agreed in writing. Neither party may assign this Agreement without the written consent of the other party.
8. COMPLIANCE WITH LEGAL REQUIREMENTS. Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
9. HOLD HARMLESS. Each party shall be liable and responsible for the consequences of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither party assumes responsibility to the other party for the consequences of any act or admission of any person, firm or corporation not a party to this agreement.
10. INDEMNIFICATION. The County and the District shall defend, indemnify and hold each other harmless 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.

There is no duty to indemnify for liability(ies) or damage(s) arising out of bodily injury to persons or damages to the property determined to be caused by, or resulting from, the sole negligence of the either the County or the District, or their respective officers, agents and employees.

This mutual 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 either the County's or the District's agents or employees, subcontractors and suppliers, shall apply only to the extent of negligence of the damages caused by or resulting from the concurrent negligence of the County's or the District's agents, employees, subcontractors and suppliers.

The County and the District 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 mutual 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 either party, or their officers, agents and employees.

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

11. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.

- a. This Agreement may be changed, modified, amended or waived only by written agreement signed by the parties and adopted by the Kittitas County Board of Commissioners and the District.
- b. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.
- c. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. INTERPRETATION. This Agreement has been submitted to the review of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accord with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.

13. GOVERNING LAW AND VENUE.

- a. This Agreement shall be governed by the laws of the State of Washington, and venue shall be in Kittitas County, Washington.
- b. If any legal action or other proceeding is brought for enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney fees incurred in that action or proceeding.

14. SEVERABILITY. Any provision of this agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or un-

enforceability, without affecting the validity or enforcement of the remaining provisions.

- 15. ENTIRE AGREEMENT. This Agreement contains all the terms and conditions agreed upon 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 of the parties hereto.
- 16. FILING. Executed copies of this Agreement shall be filed as required by RCW 39.34.040 prior to this Agreement becoming effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**KITTITAS COUNTY
DISTRICT**
607 East Mountain View
Ellensburg, WA 98926

By: *Walter Nyon* Dated: 06/20/2012
Chairman, Board of Supervisors

KITTITAS COUNTY BOARD OF COMMISSIONERS
205 West 5th Avenue, Room 108
Ellensburg, WA 98926

A. Clark Dated: June 5, 2012
Board Chair

ABSENT
Vice Chair
[Signature]
Commissioner

Julie Kjorsvik
Julie Kjorsvik, Clerk of the Board

Approved as to Form:

Deputy Prosecuting Attorney

