

101-19-030

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**REIMBURSEMENT AGREEMENT  
FOR  
SEWER TRANSMISSION LINE AND ROAD COST SHARE**

THIS AGREEMENT is entered into on this 30<sup>th</sup> day of September, 2019 between CLALLAM COUNTY, a political subdivision of the State of Washington (the "County"), and LOWER ELWHA KLALLAM TRIBE, a federally recognized Tribe (the "TRIBE").

**RECITALS:**

WHEREAS, the County is redesigning, acquiring right of way and reconstructing Dry Creek Road, County Road No. 31870 using limited grant funding and has increased the scope of the project in coordination with the Tribe; and

WHEREAS, the County is the lead agency for the design, right of way acquisition and reconstruction of this road project (the "Project"); and

WHEREAS, the Tribe wishes to install a sewer transmission line ("sewer line") within the road right of way and to share an estimated \$250,000 of project costs equally with the County, for a 0.10 mile segment at the South end of Dry Creek Road; and

WHEREAS, the County holds the right of way for the Dry Creek Road and the Project; and

WHEREAS, to assure coordination among various construction elements and utility relocations of the Project, the Tribe has requested that the sewer line installation be included in the contract for road construction; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. The recitals set forth above are hereby incorporated into the substantive provisions of this agreement.
2. The Tribe shall prepare contract documents including an Engineer's estimate for the sewer line for County review and the County shall prepare contract documents for the road improvement for Tribe's review. Following County approval of the sewer line contract documents, the County agrees to include the sewer line contract documents into the Project contract documents.
3. The County, as the lead contracting agency for the project, agrees to pay the County's project contractor (the "contractor") for the installation of new sewer line, all such work to be performed in accordance with the contract specifications set forth in the County's contract with the contractor (the "contract specifications"), subject to reimbursement by the TRIBE as set forth in Paragraph 7 below.

4. Immediately following bid opening, the County will forward apparent lowest responsible bid submission to the Tribe for review and concurrence prior to project award. The County will make the bid award 7 calendar days following the bid opening.
5. All of the contractor's work on the sewer line installation shall be subject to the Tribe's inspection for compliance with the contract specifications. The Tribe shall provide an inspection report to the County on a daily basis. The Tribe will notify the County verbally at the time of any non-compliance with the contract specifications and in writing as soon as is practicable of any non-compliance with the contract specifications, and the County will direct the contractor to make the necessary changes to satisfy the Tribe's requirements. All contact between the Tribe and the contractor shall be through the County's project representative.
6. Each party hereto shall be responsible for its own engineering, administrative, and inspection costs associated with the sewer line and road construction projects
7. County will invoice the Tribe for costs on a monthly basis. . The Tribe agrees to pay the costs associated with installation of the new sewer line and an estimated \$125,000 representing an equal share for a 0.10 mile segment at the South end of Dry Creek Road.
8. The County shall keep accurate record of the actual physical location of sewer line as constructed. The Tribe shall be responsible to provide utility locates of the sewer line in the future when requested.
9. Upon completion of the project and after final payment has been made, the sewer line will be the property of the Tribe, and the County road will be the property of the County. No sewer line hook-ups will be available to properties under County jurisdiction without permission of the County.
10. If required by a future County project within the Dry Creek Road right of way, the Tribe agrees to relocate the sewer line at the Tribe's expense. Any future damage to County roads caused by the sewer line shall be repaired by the Tribe.
11. The Tribe does not make a general waiver of its sovereign immunity from suit or other legal actions and nothing in this Agreement or elsewhere shall be construed as such a general waiver. The Tribe does make a limited waiver of its sovereign immunity for the limited purpose of enforcement of this Agreement, and for collection of money claims for actual services or goods provided under the terms of this Agreement. Any such suit shall be brought before the Clallam County Superior Court.

12. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, this Agreement shall be governed by the applicable laws of the State of Washington.
13. Differences between the parties, arising under and by virtue of the contract documents shall be brought to the attention of the County's Project Manager at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County's Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Tribe mails or otherwise furnishes to the County's Project Manager a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County's Project Manager are in error.

In connection with any appeal under this clause, the parties shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. The original written materials will be submitted to the County's Project Manager, who will then deliver the materials to a Dispute Resolution Board as described below. Copies of all written materials will be served upon the parties.

If an appeal of the County's Project Manager decision is timely received, the County and the Tribe shall convene a dispute resolution board comprised of one member nominated separately by each party, and a third member identified and agreed upon by the two members. If the two members together cannot agree upon the third member, the Tribe and County are to petition the Clallam County Superior Court to designate a third member. The Dispute Resolution Board will then attempt to resolve the dispute based upon the written materials provided by the County's Project Manager.

Reviews of the Dispute Resolution Board's determination may be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the Dispute Resolution Board's written decision. Pending a final decision in the Clallam County Superior Court, the County shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

**Board of Clallam County Commissioners**

LOWER ELWHA KLALLAM TRIBE



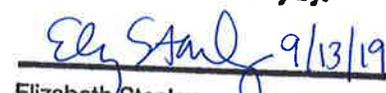
Frances G. Charles,  
Chairwoman

CLALLAM COUNTY



Marc Olias  
Chair, Clallam County Commissioners

**Approved as to form only by:**



Elizabeth Stanley  
Civil Deputy Prosecuting Attorney  
Clallam County



**CLALLAM COUNTY REIMBURSEMENT AGREEMENT  
SEWER TRANSMISSION LINE AND ROAD COST SHARE WITH A LIMITED WAIVER  
OF SOVEREIGN IMMUNITY**

**WHEREAS**, the Lower Elwha Tribal Community, also known as the Lower Elwha Klallam Tribe (“the Tribe”), is a federally recognized, self-governing Indian tribe in accordance with the Treaty of Point-No-Point of January 26, 1855, its Constitution and By-laws, approved by the Secretary of the Interior on April 29, 1968, and the Indian Reorganization Act of June 18, 1934; and

**WHEREAS**, the Lower Elwha Klallam Tribal Business Committee of the Lower Elwha Community Council is the constitutionally and duly elected representative body of the Tribe, and is responsible for ensuring the health, safety, education, welfare, social and economic development, law and order, judicial services, and housing of its tribal citizens; and to preserve and protect the culture, treaty rights, natural resources, and otherwise promoting the welfare and interests of its tribal citizens; and

**WHEREAS**, under Article IV, Section 1(a) of the Tribe’s Constitution, the Tribe has the authority to conclude agreements with local governments; and

**WHEREAS**, under Article IV, Section 1(d) of the Tribe’s Constitution, the Tribe has the authority to manage community funds in accordance with approved resolutions; and

**WHEREAS**, Clallam County (the “County”) is lead agency for design, right of way acquisition, and reconstruction of Dry Creek Road (the “Project”) and has increased the scope of the project in coordination with the Tribe; and

**WHEREAS**, the Tribe wishes to install a sewer transmission line (“Sewer Line”) within the road right of way and to share project costs equally with the County, for a 0.10 segment at the South end of Dry Creek Road, and

**WHEREAS**, to assure coordination among various construction elements and utility relocations of the Project, the Tribe has requested that the sewer line installation be included in the contract for road construction; and

**WHEREAS**, the attached Reimbursement Agreement has been developed to define the roles and responsibilities of the County and Tribe with administrative, financial and legal framework for successful implementation of the Dry Creek Road Reconstruction Project.

**THEREFORE, LET IT BE RESOLVED THAT**, the Business Committee hereby approves the and enters into the attached Reimbursable Agreement for Sewer Transmission Line and Road Cost Share with Clallam County, a copy of which is attached hereto; and

**BE IT FURTHER RESOLVED THAT**, in entering into the Reimbursable Agreement for Sewer Transmission Line and Road Cost Share with Clallam County, the Business Committee acknowledges and expressly approves the limited waiver of the Tribe's sovereign immunity in Paragraph 11; and

**BE IT FINALLY RESOLVED THAT**, the Business Committee acknowledges that Chairwoman Frances G. Charles, or Vice-Chair Russell N. Hepfer in her absence, is authorized and directed to execute the Reimbursement Agreement for Sewer Transmission Line and Road Cost Share on behalf of the Tribe.

**CERTIFICATION**

The foregoing resolution was presented at a duly called meeting of the Lower Elwha Klallam Business Committee held on the 30<sup>TH</sup> day of SEPTEMBER 2019, at which 4 members were present, constituting a quorum, and the Business Committee voted to adopt by a vote of 3 FOR, 0 AGAINST, and 0 ABSTENTIONS.

  
\_\_\_\_\_  
Frances G. Charles, Tribal Chairwoman

  
\_\_\_\_\_  
Council Member

Attachment:  
REIMBURSEMENT AGREEMENT FOR SEWER TRANSMISSION LINE AND ROAD COST SHARE