

2a
4/29

INTERAGENCY AGREEMENT WITH CLALLAM COUNTY PUBLIC WORKS AND CLALLAM COUNTY PUD#1

<p align="center">UTILITY ENGINEERING & CONSTRUCTION AGREEMENT</p> <p align="center">Work by Utility - Actual Cost Work by County - Actual Cost</p>	<p>Organization and Address</p> <p>P.U.D. No. 1 of Clallam County 2431 East Highway 101 Post Office Box 1090 Port Angeles, WA 98362</p>
<p>Agreement Number 140905</p> <p>101-14-007 <i>County Number</i></p>	<p>Section / Location</p> <p>Old Olympic Highway - Barr Road to McDonald Creek</p>
<p>Work by Utility Actual Cost Estimate: \$290,000</p> <p>Actual Cost Limit (to be paid by County): \$145,000</p> <p>Work by County Actual Cost Estimate: \$15,000</p> <p>Actual Cost Limit (to be paid by Utility): \$7,500</p>	<p>Date Agreement Executed:</p>
<p>Date Utility and COUNTY Authorized to Proceed with Work: March 16, 2014</p>	

This Agreement (the "AGREEMENT") is made pursuant to RCW 39.34 and entered into this 29th day of April, 2014, between CLALLAM COUNTY PUBLIC WORKS DEPARTMENT (hereinafter called the "COUNTY") and the above-named organization (hereinafter called the "UTILITY") (sometimes referred to individually as "PARTY" and collectively as "PARTIES").

WHEREAS, the COUNTY is planning the construction or improvement of the road identified above, and in connection therewith it is necessary to remove and/or relocate or construct certain UTILITY facilities as set forth in the attached plans; and

WHEREAS, the UTILITY and the COUNTY have been unable to determine the full value of each PARTY'S easements and right-of-way; and

WHEREAS, in order to proceed with this project in a timely manner, the UTILITY and the COUNTY agree that the UTILITY has an existing easement covering one half of this

project and therefore the PARTIES shall share equally the cost of relocation of certain UTILITY facilities and easement acquisition; and

WHEREAS, it is deemed to be in the best public interest for the UTILITY, as owners of said facilities, to perform the necessary engineering, including preparing plans, and to prepare an estimate of the cost of relocation of the UTILITY owned facilities; and

WHEREAS, it is deemed to be in the best public interest for the COUNTY to acquire new and replacement easements on behalf of the UTILITY, in accordance with the UTILITY'S specifications, and to prepare an estimate of such costs; and

WHEREAS, the UTILITY has a compensable interest in its facilities and right-of-way by virtue of being located on existing easements and right-of-way on one half of this project, and the COUNTY and UTILITY have agreed to equally share the costs associated with the UTILITY, as owner of said facilities, preparing the preliminary engineering, providing materials and performing the work of removing, adjusting, and/or relocating the facilities, and the costs associated with the COUNTY obtaining easements on behalf of the UTILITY.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I GENERAL

If the UTILITY has personnel available to perform the work of removing, adjusting, and/or relocating the facilities, the UTILITY shall furnish all necessary labor, materials, equipment, and tools required to perform this work.

If the UTILITY reasonably determines it is not adequately staffed or equipped to perform all of the work required herein, the UTILITY shall have all or part of the work performed by a prequalified contractor under the direction and control of the UTILITY.

Attached hereto and incorporated herein by this reference are Exhibit "A," the specifications of the work to be performed by the UTILITY and the COUNTY, and Exhibit "D", the Transmission Line Construction Plans for the "Barr Road to McDonald Creek" area. Each PARTY will be responsible for administering its portion of the work as set forth in Exhibit A.

II PAYMENT

The COUNTY, in consideration of the faithful performance of the work to be done by the UTILITY, agrees to pay the UTILITY actual direct and related indirect costs incurred on the project not to exceed limit shown in the subheading of this AGREEMENT under "Actual Cost Limit (to be paid by COUNTY)."

The UTILITY, in consideration of the faithful performance of the work to be done by the COUNTY, agrees to pay the COUNTY actual direct and related indirect costs incurred on the project up to the limit shown in the heading of this AGREEMENT under "Actual Cost Limit (to be paid by UTILITY)."

Attached hereto and incorporated herein by this reference is Exhibit "B," an estimate of costs for work to be performed by the UTILITY at the COUNTY's expense.

Attached hereto and incorporated herein by this reference is Exhibit "C," an estimate of costs for work to be performed by the COUNTY at the UTILITY's expense.

Partial payments may be made upon written request of the UTILITY or the COUNTY to cover costs incurred, and are not to be more frequent than one (1) per month. In the event that partial payment is requested, costs incurred by both the UTILITY and COUNTY are to be totaled and submitted in writing to both PARTIES. Payment is then to be made by the COUNTY or UTILITY, as the case may be, within thirty (30) days of that PARTY's receipt of the request for partial payment. It is agreed that payment of any partial claim will not constitute agreement as to the appropriateness of any item or the calculations as submitted. At the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment, it is agreed that such overpayment will be refunded by either the UTILITY or COUNTY, as the case may be, within thirty (30) days of the refunding PARTY's receipt of the final audit.

During the progress of the construction and for a period not less than three (3) years after the date of final payment, the records and accounts pertaining to the construction of the project and accounting therefor are to be kept available for inspection and audit by the COUNTY or UTILITY and/or State or Federal Government; and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until any such litigation, claim, or audit finding has been resolved, even though such litigation, claim, or audit continues past the three-year retention period.

The UTILITY and COUNTY shall submit a final billing to each other within 90 calendar days following completion of the work involved.

III AUTHORITY TO BEGIN WORK AND SCHEDULE OF WORK

The UTILITY was authorized to begin work on August 1st, 2013. However, reimbursement shall be made only as to those costs incurred subsequent to the execution date of this AGREEMENT.

The UTILITY agrees that, to the best of its ability, the UTILITY shall schedule the work herein referred to and perform said work in such a manner as not to delay or interfere with the COUNTY's contractor in the performance of its obligations.

IV EXTRA WORK

Reimbursement for costs in excess of the amount shown in the heading of this AGREEMENT shall be limited to costs authorized by a written modification to this AGREEMENT as approved by the COUNTY and UTILITY.

V LEGAL RELATIONS

Each PARTY agrees to indemnify, defend, and hold harmless the other PARTY from and against third-party claims for damages for personal injury or loss, including death, and property damage connected with each PARTY'S performance hereunder and arising out of the negligence of that PARTY'S employees, officers, and agents. This duty to indemnify, defend, and hold harmless shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee or its agents or employees. Each PARTY'S duty to indemnify, defend, and hold harmless the other for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of both PARTIES or their agents or employees shall apply only to the extent of negligence of the indemnitor or its agents or employees.

Each PARTY specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this AGREEMENT shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

The duty to defend, indemnify and hold harmless shall include personnel-related costs, reasonable attorney fees, court costs and all other claim-related expenses.

The COUNTY and the UTILITY hereby certify that the terms and conditions of the foregoing indemnity provision are the subject of mutual negotiation by the PARTIES and are specifically and expressly agreed to in consideration of the mutual benefits derived under the terms of this AGREEMENT.

This provision survives the termination of this AGREEMENT.

VI MISCELLANEOUS

Recitals: The recitals set forth at the beginning of this AGREEMENT are hereby incorporated into the substantive provisions of this AGREEMENT.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Integration, Modification and Severability: This AGREEMENT, including all Exhibits, shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and assigns. This is the entire agreement between the PARTIES; there are no other agreements or representations not set forth herein; and this AGREEMENT incorporates and supersedes all prior negotiations, agreements, and representations. This AGREEMENT may not be modified except in writing and signed by an authorized representative of each PARTY.

If any provision of this AGREEMENT is deemed by law to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative, or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from this AGREEMENT with the remaining phrases, clauses and provisions continuing in full force and effect as if the AGREEMENT had been signed with the void, invalid or inoperative portions so modified or eliminated. In addition, a phrase, clause or provision shall be substituted which is consistent with the intent of this AGREEMENT and the severed phrase, clause or provision.

Termination: This AGREEMENT shall terminate upon final payment.

Obligations/Responsibilities Required by Law: Nothing in this AGREEMENT shall be construed to relieve the PARTIES from their respective obligations and responsibilities as required by law, except to the extent this AGREEMENT may modify those duties and/or obligations.

Dispute Resolution: In the event of any dispute arising from or related to the administration or performance of this AGREEMENT, the PARTIES agree to first try to resolve the issue themselves. In the event either PARTY reasonably believes the PARTIES cannot resolve the dispute on their own, the dispute shall be resolved by submitting the same to binding arbitration, which shall proceed according to the Washington arbitration act, Chapter 7.04A RCW, and which shall be conducted within Clallam County, Washington; provided, however, that each PARTY shall select a nominating person within ten (10) days of notice of the dispute from one PARTY to the other. The two nominating persons shall then meet and promptly select the arbitrator. If, within thirty (30) days of the notice of the dispute, the nominating persons are unable to select an arbitrator, the arbitrator shall be selected by a Superior Court Judge of Clallam County. The PARTIES shall require a written decision by the arbitrator as a condition of the selection of the arbitrator. The prevailing PARTY as determined by the arbitrator shall be entitled to its reasonable attorney fees and costs associated with the arbitration. The PARTIES shall share equally the arbitrator's fee and costs. Venue for any action brought on the arbitration award, including enforcement of such award, shall

be in the Superior Court of Clallam County, and such action shall be governed by application of the laws of the state of Washington. The prevailing PARTY in any such action on the arbitration award shall be entitled to its reasonable attorney fees and costs associated with such action.

Notice: Any notice required or permitted under this AGREEMENT shall be deemed sufficiently given or served if sent to the COUNTY and the UTILITY at the addresses provided below:

P.U.D. NO. 1 OF CLALLAM COUNTY
Att'n General Superintendent
2431 East Highway 101
P.O. Box 1090
Port Angeles, WA 98362

CLALLAM COUNTY
PUBLIC WORKS DEPARTMENT
ATTN: Ross Tyler
223 E. Fourth St., Suite 6
Port Angeles, WA 98362

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year last written below.

Approved this twenty-ninth day of April 2014, by a majority of the Board of Clallam County Commissioners at an open public meeting.

P.U.D. NO. 1 OF CLALLAM COUNTY

CLALLAM COUNTY BOARD OF COMMISSIONERS

By: [Signature]

[Signature]

Michael C. Chapman, Chair

Title: General Manager

Date: 29 April 2014

Date: 5.5.14

Attest: Trish Holden

Trish Holden, CMC
Clerk of the Board

Approved as to form only by:

[Signature]

Kristina Nelson-Gross
Deputy Prosecuting Attorney
Clallam County