

## INTERLOCAL AGREEMENT

Regarding

Artificial Recharge Test via Irrigation Ditches

This Interlocal Agreement, entered into by and between Clallam County (County), the Clallam Ditch Company (CDC) and the Cline Irrigation District (CID), supports the “Dungeness Aquifer Storage & Recovery Feasibility Study” sponsored by the Washington Department of Ecology. This phase is designated as the “Artificial Recharge Test via Irrigation Ditches.”

WHEREAS both the CDC and the CID own and operate ditches for the purpose of conveying Dungeness River water from a shared diversion point on the west bank to points downstream for irrigation, livestock watering, and domestic purposes; and

WHEREAS the Interlocal Cooperation Act (Chapter 39.34 RCW) provides authority for public agencies, including special purpose districts, to exercise their respective powers jointly through Intergovernmental Agreements;

NOW, THEREFORE, the parties agree to the terms of this Agreement and to cooperate and perform the functions and actions as set forth below.

### I. DEFINITIONS

The following definitions shall apply to and govern this Agreement:

AR: Artificial Recharge, the process of intentional infiltration of water other than precipitation into the ground

AR test: Artificial Recharge test, an experiment involving intentional infiltration of water into the ground via irrigation ditches or associated facilities

AR test project manager: shall be the person named in Section IV for Clallam County

CDC-CID Ditch Manager: shall be the person named in Section IV for Cline Irrigation District

CDC-CID Staff: shall include the Ditch Manager and other persons employed by CDC-CID

Pilot test: also known as the AR test, listed above

Proper AR test operation: management of the test such that priority is given first to protection of life, property and the environment, second to agricultural activities, and third to AR test objectives

River: Dungeness River, excluding tributaries

Test facilities: structures, such as check dams, intended to enhance infiltration as part of an AR test; also refers to structures or equipment conveying, controlling, or monitoring AR test water

Test period: the period that the AR test will be conducted; potentially 2 weeks to 4 months in the spring and summer of 2008

Test site: a length of ditch or a pond to be used for infiltration as part of an AR test

## II. CLALLAM COUNTY'S OBLIGATIONS:

1. With regard to the AR Test Facilities and Functions, Clallam County agrees to:
  - a. Install a flow meter at the Jakeway site ("Site 1") between valve and outlet;
  - b. Maintain the test facilities during the test period;
  - c. Obtain any permits (e.g., water rights) required by the State of Washington to use River water or other sources for AR test purposes;
2. With regard to the operation of the AR Test, Clallam County agrees to:
  - a. Provide the CDC-CID Ditch Manager with contact information for affected property owners, approval forms including Right of Entry forms, and project information such as anticipated work, schedule, etc.;
  - b. Reimburse the CDC up to \$2,500.00 for the time and expenses of the CDC-CID staff for time spent on AR test-specific activities listed in the CDC-CID section below, on invoices listing those activities, at hourly rates not to exceed \$25.00 per hour, and expenses such as travel and phone not to exceed \$250.00;
  - c. Consult with the CDC-CID Ditch Manager when scheduling the AR test to avoid interruption of irrigation water flow;
  - d. Assure to the best of its abilities that the test is operating properly and that the CDC-CID water system will not be impacted by test operations;
  - e. Measure the volume of water used for AR testing at each site;
  - f. Conduct testing as planned and scheduled (see Exhibit A);
  - g. Maintain test facilities and test sites during the test period, including monitoring water levels to reduce the likelihood of flooding; and
  - h. Keep all parties to this Agreement informed of progress of tests.
3. With regard to the post-test period, Clallam County agrees to:
  - a. Prepare a final report within four months of the conclusion of testing and distribute to all parties to this Agreement;

- b. Provided the test is successful, prepare a plan, to be completed no later than February 1, 2009, in coordination with the other parties to this Agreement, to protect right-of-ways, easements, test facilities, and other critical assets for future AR use;
- c. Assuming the test is successful and once a plan is complete, take action in an effort to secure support-funding, permanent right-of-ways, operating agreements, etc., in order that the successful test site(s) may be used for AR on a permanent basis; and
- d. In the event that permanent AR will not be pursued, dismantle AR test facilities and restore AR test sites to their pre-test condition.

### III. CLALLAM DITCH COMPANY'S and CLINE IRRIGATION DISTRICT'S OBLIGATIONS:

1. With regard to AR Test facilities and program, CDC-CID agree to:
  - a. Provide the services of the CDC-CID Ditch Manager to contact affected property owners and distribute project information and Right of Entry forms as required by the County, and to conduct other tasks as requested and available, on a reimbursable basis; and
  - b. Participate in the test site selection.
2. With regard to operation of the AR Test, CDC-CID agree that:
  - a. The CDC-CID Ditch Manager will support the AR program, after being advised of the final project schedule, by assuring that the CDC and CID conveyance systems are operating properly and that the test effort will not be impacted by its operation;
  - b. The CDC-CID Ditch Manager will, during the conduct of the tests, assure that the CDC and CID facilities being used are being properly maintained; and
  - c. Any adverse conditions observed by the CDC-CID Ditch Manager will, immediately, be remedied to the best of his ability and brought to the attention of the County AR Project Manager for resolution.
3. With regard to the post-test period, CDC-CID agree to:
  - a. Work with the parties to this Agreement to develop a plan for the future use of AR test facilities and sites, by February 1, 2009.

#### IV. FORMAL POINTS OF CONTACT FOR CORRESPONDENCE PERTAINING TO THIS AGREEMENT:

1. Clallam County  
Ann Soule  
223 E. 4<sup>th</sup> Street, Suite 14  
Port Angeles, WA 98362  
360-417-2424
2. Clallam Ditch Company  
Danny Smith  
80 Cook Rd.  
Sequim, WA 98382  
360-683-6883
3. Cline Irrigation District  
Jim White, CDC-CID Ditch Manager  
c/o Glenda Clark  
322 Clark Rd.  
Sequim, WA 98382  
360-683-2982

#### V. DISPUTES

1. Disputes that cannot be resolved by the party representatives designated in Part IV shall be referred to their designees for resolution. If disputes are not resolved by the parties within thirty (30) days of the referral, unless the parties agree to an extension of time, the dispute shall be referred to an arbitrator who has been agreed upon by the parties to this Agreement. If they cannot agree to an arbitrator, any party may apply to the presiding judge of the Clallam County Superior Court for appointment of an arbitrator. The arbitrator's decision shall be final and binding on all parties. Each party shall pay equal shares of the arbitrator's fee. Each party shall absorb its own costs.
2. If consensual written consent to apply for the appointment of an arbitrator is not reached, any party may seek court action to resolve the dispute.

#### VI. INDEPENDENT CONTRACTORS

1. CDC and CID shall each furnish services to the County in the capacity of an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

2. The Contractors acknowledge that the entire compensation for this Agreement is specified herein and the Contractors are not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Contractors represent that they maintain a separate place of business, serves client other than the County, will report all income and expense accrued under this contract with the Internal Revenue Service and the State of Washington Department of Revenue as required by applicable laws.
3. In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Contractors agree to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any payments be due to the Contractors pursuant to this Agreement, the Contractors agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.
4. Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Contractors, their officers, employees and agents, shall not be entitled to any benefits which Clallam County provides to its employees.

## VII. HOLD HARMLESS

1. Each party to this agreement hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, or those of its officers, agents or employees to the fullest extent required by law, and further agrees to indemnify, defend, and save harmless the other parties from any such liability. In the case of joint negligence of any combination of the County, CDC and/or CID, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other parties in proportion to the percentage of negligence attributable to the other parties.

## VIII. TERMINATION

1. Termination for Default. If any party to this Agreement defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt, the County may, by depositing written notice to the party in the U.S. Mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the defaulting party shall not be entitled to receive any further payments under the Agreement. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the party. The parties agree to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work,

and all damage sustained, or which may be sustained by the County by reason of such default.

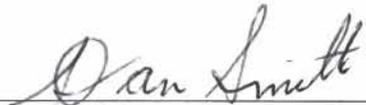
If a notice of termination for default has been issued and it is later determined for any reason that the party was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

The CDC-CID Staff services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the AR Test Project Manager.

2. Termination for Public Convenience. The County may terminate the Agreement in whole or in part if it is unable to obtain the necessary legal or other permissions in a timely manner, or whenever the County determines in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the parties shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the agreed price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach by the County.
3. Termination Due to Insufficient Funds. If sufficient funds for payment under this Agreement are not appropriated or allocated or are withdrawn, reduced or otherwise limited, the County may terminate this Agreement upon five (5) days written notice to the parties. No penalty or expense shall accrue to the County in the event this provision applies.
4. Termination Procedure. The following provisions apply in the event that this Agreement is terminated:
  - a. The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
  - b. The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
  - c. If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.

This Agreement shall commence on March 15, 2008, and will terminate on December 31, 2008. This Agreement shall be executed in triplicate originals, each having the same force and effect. It shall be effective when signed by authorized representatives of each Party.

CLALLAM DITCH COMPANY

  
\_\_\_\_\_  
Dan Smith, President

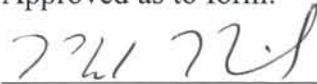
Date: 4/1/08

CLALLAM COUNTY

  
\_\_\_\_\_  
Michael C. Chapman, Chair  
Board of County Commissioners

Date: 04-01-08

Approved as to form:

  
\_\_\_\_\_  
Mark Nichols, Chief Dep. Prosecuting Atty.

CLINE IRRIGATION DISTRICT

  
\_\_\_\_\_  
Cliff Vining, President

Date: \_\_\_\_\_

Exhibit A, Proposed Project Schedule

## EXHIBIT A.

### PROPOSED PROJECT SCHEDULE

#### 1. Timing

Ideally, there will be several recharge test periods at each site, each lasting a minimum of 2 weeks between April 1<sup>st</sup> and July 31<sup>st</sup>.

However, it is understood that the exact timing and duration will depend on several factors, including:

- Volume of flow delivered to each site,
- Conditions imposed by Ecology pertaining to (a) start and end of test, and (b) Dungeness River flow as measured at Schoolhouse Bridge,
- Availability of water from CDC,
- Infiltration capacity of each site, and
- Other factors not yet identified.

#### 2. Volume

Ideally, 1-2 cfs will be delivered to each site for the test periods as described above. The total volume requested for all 3 recharge test sites combined will not exceed 5 cfs for any given period of time; the total volume requested for any one site will not exceed 2 cfs.

However, it is understood that the exact volume will depend on several factors, including:

- Irrigation needs by CDC and CID (which have higher priority than the tests),
- Maximum allowable volume imposed by Ecology,
- Infiltration capacity of each site, and
- Other factors not yet identified.