

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
AND KALISPEL TRIBE OF INDIANS FOR
TREATMENT OF HISTORIC PROPERTIES**

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 KALISPEL TRIBE OF INDIANS (“Tribe”). The District and the Tribe 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 Tribe is a sovereign Indian nation recognized as such by the Federal government.
- C. The District and the Tribe 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 Tribe to carry out its municipal purposes pursuant to RCW 54.16.090.
- E. The Parties desire that the Tribe will complete all aspects of work for the treatment of historic properties found eligible for inclusion in the National Register of Historic Places (“NRHP”) and affected by the operations of the Box Canyon Hydroelectric Project, as described in the attached 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) December 31, 2020; (b) the date on which the Parties mutually agree to terminate this Agreement; (c) upon 30-days’ notice of termination by either Party; or (d) 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 to mitigate or minimize adverse effects to NRHP-eligible historic properties affected by Project operations. The services provided by the Tribe under this Agreement are necessary to implement sustainable, cost-effective, and engineering-sound designs that (a) mitigate erosion of NRHP-evaluated and eligible archaeological deposits, and (b) are non-invasive to the archaeological deposit’s integrity (a contributing element of the historic property’s NRHP eligibility).
- 3. Scope of Work. The Tribe shall perform all of the work described in the Scope of Work for each respective calendar year under this Agreement. The Tribe agrees that the work to be performed under this Agreement shall be prosecuted regularly and diligently in order to ensure full completion of the Scope of Work within the timeline specified in the Scope of Work.

- a. 2019 Scope of Work. The 2019 Scope of Work and associated budget, which has been previously submitted by the Tribe and approved by the District, is attached to this Agreement as Appendix A.
 - b. Development of 2020 Scope of Work. The Tribe shall provide the District with a proposed 2020 Scope of Work no later than August 30, 2019. Such Scope of Work shall identify all proposed activities, including a proposed budget and timeline for completion of such activities. The District will work with the Tribe to arrive at a mutually agreeable 2020 Scope of Work by September 30, 2019. Once the 2020 Scope of Work is agreed upon by both Parties, it shall be deemed incorporated into this Agreement.
 - c. Development of 2021 Scope of Work. The Tribe shall provide the District with a proposed 2021 Scope of Work no later than June 30, 2020. Such Scope of Work shall identify all proposed activities, including a proposed budget and timeline for completion of such activities. The District will work with the Tribe to arrive at a mutually agreeable 2021 Scope of Work by July 31, 2020. The Tribe shall develop this 2021 Scope of Work regardless of whether the Parties enter into a successor agreement to this Agreement, and regardless of whether the 2021 Scope of Work is to be performed by the Tribe.
4. Compensation. The District shall pay the Tribe for services rendered and costs actually incurred, as invoiced by the Tribe, and in amounts not to exceed the costs identified in that year's respective Scope of Work and associated budget. Total compensation for each year's Scope of Work shall not exceed \$150,000, including any applicable taxes. The Tribe shall submit monthly invoices to the District for work completed through the date of the invoice. All invoices will be itemized to reflect the specific costs incurred, individuals performing the requested tasks, the billing rate for each individual, and the hours worked. Unless otherwise stated, payment to the Tribe shall be made within thirty (30) days of receipt and approval of an invoice from the Tribe.
 5. Personnel and Professional Services. The Tribe 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 Tribe 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 Tribe 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 Tribe 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.
 6. Extensions of Time. The Tribe shall provide written notification to the District within three (3) working days of any occurrence which, in the Tribe's opinion, may justify an extension of time for the completion of the Scope of Work for that year. The District will acknowledge receipt of the Tribe's notice within three (3) working days of its receipt.
 7. Insurance. Before the Tribe commences work under this Agreement, a Certificate of Insurance with associated endorsement verifying that the Tribe 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 \$1,000,000.00; and

- c. Commercial Automobile Liability Insurance on an occurrence basis of not less than \$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.
8. Tax. Each Party will be responsible for paying any taxes it owes under federal and state law.
9. Public Relations. The Tribe agrees that complaints received from property owners or public authorities, which relate to the performance of this Agreement by the Tribe, will receive the Tribe'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 Tribe 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 Tribe from third parties arising out of or in connection with the completion of the Scope of Work. In handling complaints, the Tribe 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.
10. Indemnification. Each Party shall be responsible, and shall indemnify and hold harmless the other Party, for its proportional negligence or more culpable actions or omissions arising from this Agreement; PROVIDED, each Party's duty to indemnify under this section is subject to the limitation that no indemnification shall be made with respect to any claim that does not exceed \$10,000 in the aggregate. Notwithstanding the foregoing, in no event shall the obligation of a Party to indemnify the other Party pursuant to this section exceed \$1,000,000 in the aggregate.
11. Relationship of the Parties. The relationship of the Tribe to the District shall be that of an independent contractor rendering professional services. The Tribe 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 the relationship of employer and employee or principal and agent between the District and the Tribe.
12. Entire Agreement. This Agreement constitutes 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 Tribe 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. 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.
16. 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 Tribe 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.

17. Dispute Resolution. In the event of any dispute between the District and the Tribe arising from this Agreement, the terms of this Agreement shall control. This Agreement shall be interpreted and enforced according to the laws of the State of Washington.

In any dispute between the Parties arising from this Agreement, the Parties shall make good-faith efforts to informally resolve such dispute. If the Parties cannot informally resolve the dispute, the dispute shall be resolved through binding arbitration. All arbitrated disputes, claims, and controversies between the Parties arising out of or related to this Agreement, including, without limiting the generality of the foregoing, any claim of misrepresentation, breach, or non-performance, all of which are herein designated as “disputes,” shall be resolved through arbitration by a single neutral arbitrator, in accordance with the Washington Uniform Arbitration Act (RCW 7.04A). A single neutral arbitrator shall be selected by mutual consent of the Parties. If such an arbitrator cannot be agreed upon, the procedure identified in RCW 7.04A.110 shall apply. Arbitration will occur in Pend Oreille County, Washington. In any arbitration between the Parties arising from this Agreement, the prevailing Party shall be entitled to recover its reasonable fees and costs, including all reasonable arbitration costs, arbitrator fees, witness fees, collection expenses, attorneys’ fees, and other related costs. The Arbitrator shall not have authority to award consequential damages, punitive damages, or damages in excess of \$1,000,000.

18. Limited Waiver of Sovereign Immunity. The Tribe enjoys and expressly asserts sovereign immunity from suit. Notwithstanding the foregoing, the Tribe waives its sovereign immunity, by and through the authority of the Kalispel Tribal Business Committee, for the limited purpose of participating in an arbitration with the District under this Agreement, including a lawsuit in which the District seeks to compel such arbitration if the Tribe refuses to arbitrate; a lawsuit to enter and enforce judgment on an arbitrator’s award; or a lawsuit in which the District alleges that the arbitration award under this Agreement exceeded the scope of the arbitrator’s authority under the Revised Code of Washington. This limited waiver of sovereign immunity does not and shall not be construed to allow any order or judgment against any real property of the Tribe, or any suit against any officer, employee, or agent of the Tribe. Nor shall this limited waiver of sovereign immunity confer or be construed to confer any benefits or rights unto any third party.

The Tribe agrees not to assert that the Tribe or its courts have jurisdiction over, or that tribal remedies must be exhausted with respect to, any proceeding under this section. The Tribe agrees that, for purposes of this Agreement, the District is not subject to the jurisdiction on the Kalispel Tribe of Indians or any of its agencies or courts for any purpose related to this Agreement.

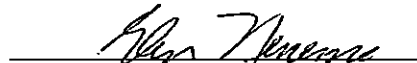
19. Notifications. All notices to be given pursuant to this Agreement shall be addressed as follows:

To District	To Tribe
Pend Oreille Public Utility District Attn: General Counsel 130 N. Washington Ave. PO Box 190 Newport, WA 99156 twhitney@popud.org	Kalispel Tribe of Indians Attn: Legal Office 934 S. Garfield Rd. Airway Heights, WA 99001 zwelcker@kalispeltribe.com

20. 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.
21. 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.
22. 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.


Public Utility District No. 1
of Pend Oreille County


Kalispel Tribe of Indians

By: F. Colin Willenbrock
Title: General Manager
Date: 9-10-19

By: Glen Nenema
Title: Chairman
Date: 9-3-19