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## INTERAGENCY AGREEMENT

between

**PUBLIC UTILITY DISTRICT No. 1 of CHELAN COUNTY**

**AND**

**WASHINGTON DEPARTMENT of FISH and WILDLIFE**

### AGREEMENT NO. 23-13026

#### **1. PARTIES**

Public Utility District No. 1 of Chelan County, Washington (hereinafter "District") has retained Washington Department of Fish and Wildlife, (hereinafter "Contractor") in the State of Washington, to perform services for the District pursuant to the terms of this Interagency Agreement ("Agreement"), and as authorized by the Interlocal Cooperation Act, RCW 39.34.

#### **2. DEFINITIONS**

**Acceptance:** Notice from District to Contractor that a Deliverable or Service has been completed in accordance with this Agreement.

**Deficient or Deficiency:** A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to Specifications, documentation or this Agreement to the District's satisfaction.

**Deliverables:** Contractor's products which result from the Services and which are prepared for District (either independently or in concert with District or third parties) during the course of Contractor's performance under this Agreement.

**Specifications:** The technical and other written specifications, directions and Deliverables that define the requirements between District and the Contractor.

#### **3. SCOPE OF SERVICES AND DELIVERABLES**

The Services to be performed and the Deliverables to be provided by the Contractor are described in the Scope of Services Exhibit, attached hereto, and by this reference herein incorporated. District shall have the right to review and test the Deliverables following Contractor's delivery of each to District to determine whether the Deliverables conform to the requirements of the Agreement to District's satisfaction. The District may either: reject a Deliverable if it is Deficient or contains a Deficiency, or accept each Deliverable ("Acceptance"). If the District rejects the Deliverables, Contractor shall, at District's request, promptly correct all Deficiencies and, thereafter, District shall again have the opportunity to review and test the Deliverables. If Contractor is not able to correct all Deficiencies in the Deliverables within 30 days following their receipt by District, District



shall have the right to terminate this Agreement, which termination shall be deemed due to Contractor's default.

#### **4. PAYMENT**

Unless otherwise agreed and set forth in any exhibits hereto, the District will pay the Contractor monthly for undisputed amounts based on Services performed in accordance with the terms of this Agreement and as itemized on a correct written invoice to the District, as verified by the District Project Leader. All correspondence and invoices should be plainly marked with the Agreement number referenced above. Invoices may be emailed to [APDept@chelanpud.org](mailto:APDept@chelanpud.org) or delivered to Public Utility District No. 1 of Chelan County, 327 N. Wenatchee Ave., P. O. Box 1231, Wenatchee, WA 98807. Contractor shall bill the District on a monthly basis with net payment due thirty (30) days from the date that the correct invoice is received by the District. However, in no event shall the total amount of compensation to be paid by the District for said services, including all fees and costs incurred by the Contractor in the performance of this Agreement, exceed **\$20,306.00**.

A Rate Schedule for Services is attached as an Exhibit. The same may be modified only in writing executed by both parties. The Contractor shall charge only reasonable expenses. For example, air travel shall be coach fare only. If the Contractor charges for the use of equipment, computers or other items, the same must be included and agreed upon in advance in the Exhibit.

If Contractor fails to deliver Deliverables or to provide Services, which satisfy Contractor's obligations hereunder, District shall have the right to withhold any and all payments due hereunder. District may withhold any and all such payments due hereunder to Contractor, without work stoppage, until such failure to perform is cured.

#### **5. CHANGES TO SCOPE OF SERVICES, COSTS ESTIMATE OR SCHEDULE**

The Scope of Services, costs or schedule shall not be changed except in writing agreed to by both parties. The quoted fees and Scope of Services constitute the best estimate of the fees and tasks required to perform the Services as defined. This Agreement, upon execution by both parties hereto, can be amended only in writing and signed by both parties.

#### **6. RELATIONSHIP OF PARTIES**

The parties intend that an independent contractor relationship will be created by this Agreement. The conduct and control of the Services and safety measures required by the Services lie solely with the Contractor. The Contractor is not to be considered an agent or employee of the District for any purpose and the Contractor is not entitled to any of the benefits that the District provides for the District's employees. It is understood that the



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Contractor is free to contract for similar services to be performed for other parties while it is under contract with the District, provided that any work for others does not prevent the Contractor from fulfilling all the Contractor's obligations pursuant to this Agreement.

Contractor, as an independent contractor, understands and acknowledges that it is not entitled and does not desire to be covered by any payroll taxes or other fringe benefits. Contractor agrees to pay its own social security taxes, income taxes and other health insurance benefits.

## **7. INDEMNITY**

The Contractor covenants and agrees that it will indemnify, defend, and hold harmless the District and any and all of the District's officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property, to which the District or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default under the Agreement on the part of the Contractor or any subcontractor or any of the Contractor's or subcontractor's officers, principals, agents or employees. With regard to any claim based on the concurrent negligence of the indemnitor, his agent or employee, and the indemnitee, the indemnitor's liability under this section shall apply to the full extent of the negligence of the indemnitor, his agent or employee. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of the Contractor or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. **THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO THE DISTRICT.**

## **8. DURATION AND TERMINATION**

The Agreement shall be in effect upon the Effective Date, and shall be terminated by any of the following events: (a) death or dissolution of the Contractor, (b) failure to comply with any applicable law, (c) mutual agreement of the Parties, (d) District giving the Contractor not less than fifteen (15) days advance written notice of termination, or (e) failure of the Contractor to cure any material breach within (7) seven days of receipt of written notice from the District. The District may at any time stop performance of Services without terminating the Agreement. Otherwise, this Agreement shall remain in force until **May 1, 2024**, or earlier if the Services contemplated hereunder are completed to the satisfaction of the District.



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## **9. CONDITIONS OF SERVICE AND NON-INTERFERENCE WITH PROJECT OPERATIONS**

The Contractor has informed itself of all conditions relating to the Services to be provided. Contractor understands that it may be performing Services hereunder at one or more of the District's hydroelectric projects or other facilities and that Contractor must at all times conduct its business so as to create a minimum of interference with operation and maintenance of said projects and facilities.

## **10. STANDARD OF PERFORMANCE**

Contractor will perform its Services with the level of skill, care and diligence normally provided by and expected of persons performing Services similar to and like those to be performed pursuant to this Agreement. Contractor understands and acknowledges that the District will be relying upon its accuracy, competence and credibility and the completeness of the Services to be provided hereunder. All personnel shall be fully qualified and authorized to perform the Services.

## **11. WORK PRODUCT**

All data, Deliverables, designs, drawings, calculations, information obtained, materials information and the results of all Services performed by Contractor hereunder in written, electronic or other form, shall be considered work for hire and shall become the property of the District upon completion of the Services performed and shall be delivered to the District prior to final payment.

## **12. DISCLOSURE OF CONFIDENTIAL INFORMATION**

Contractor shall not divulge or sell to any third parties any information, which is not otherwise publicly available, obtained from or through the District or developed hereunder, including District retail customer private or proprietary information as defined in RCW 19.29A, without first obtaining approval from the District or its designated representative. Contractor shall supply all Deliverables provided hereunder in draft report form to the District for review and comment before any reports are finalized or distributed to any third Parties.

## **13. PURCHASE OF MATERIAL/EQUIPMENT**

Contractor agrees that any materials and/or equipment purchased hereunder at the direction of the District shall be in compliance with Washington public works and bid laws. Verification of compliance shall be provided upon written request by the District. Any materials and/or equipment purchased hereunder are the property of the District and upon completion of the Services, all such materials and/or equipment shall be returned to the



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District prior to the final payment. This includes all items purchased, which are charged to the District.

#### **14. ACCESS TO RECORDS**

The District shall have access to any book, document, paper and record of the Contractor which is pertinent to this Agreement for the purposes of making audits, examination, excerpt and transcriptions.

All such records and all other records pertinent to this Agreement and work undertaken pursuant to this Agreement not provided to the District shall be retained by the Contractor for a period of six (6) years after the completion of the work, pursuant to this Agreement, unless a longer period is required to resolve audit findings or litigation. In such cases, the District may request, and the Contractor shall abide by, such longer period for record retention.

#### **15. QUALIFIED PERSONNEL**

All services required hereunder will be performed by the Contractor or under Contractor's supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services. Contractor personnel assigned to perform Services hereunder, as identified in Scope of Services Exhibit, shall not be replaced without written approval in advance by the District's Project Leader.

#### **16. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

Contractor shall comply with all applicable federal, state and local laws and regulations, all of which are deemed to be incorporated into this Agreement as if fully set forth.

#### **17. DRUG FREE WORKPLACE**

Contractor agrees to abide by the Drug Free Workplace Act of 1988. Contractor shall immediately remove any employee from further work when it is determined that they are not fit for duty. Contractor further agrees that failure to comply with the aforementioned shall be cause for the District to immediately terminate this Agreement without advance notice.

#### **18. VIOLENCE IN THE WORKPLACE**

The carrying or possession of firearms or other weapons is prohibited at all times in District buildings or on District property, including District parking lots and in vehicles. The carrying or possession of firearms or other weapons is prohibited on any other District location while performing duties for the District under this Agreement.



The Contractor shall immediately remove any employee from further work if it is determined that the person is carrying or in possession of firearms or other weapons, as defined in the District's Violence in the Workplace Policy, a copy of which is available upon request.

The failure of the Contractor to comply with this section shall be deemed cause for the District to immediately terminate this Agreement without advance notice.

## **19. SAFETY**

The Contractor and subcontractors, if any, shall take all safety precautions and shall comply with all laws and regulations with regard to safety and the Services to be performed.

Contractor staff who are working in facilities owned by the District shall attend a site specific construction safety orientation provided by the District.

## **20. SECURITY**

Contractor agrees to comply with the District's Security and Badging Program as may be amended. The District will issue badges or provide other security access as deemed appropriate by the District to Contractor employees who are authorized to enter District facilities. The District's Security policy is available to the Contractor upon request.

## **21. NOTICES**

Any notices shall be effective as personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

Public Utility District No. 1 of Chelan County

Attn.: Catherine Willard  
P. O. Box 1231  
327 N. Wenatchee Avenue  
Wenatchee, WA 98807  
Phone: (509) 663-4179  
Email:  
Catherine.willard@chelanpud.org

Washington Department of Fish and Wildlife

Attn: Katy Shelby  
1111 Washington St. SE (Physical) PO  
Box 43200 (Mailing)  
Olympia, Washington 98504-3200  
Phone: 509-664-4312  
Email: katy.shelby@dfw.wa.gov

## **22. WAIVER OF BREACH**

The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other party.



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### **23. ASSIGNMENT/SUBCONTRACTS**

Insofar as this Agreement pertains to services, the Contractor shall not assign or subcontract any portion of the Services without written permission from the District.

### **24. ATTORNEY'S FEES**

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney's fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled, in addition to other relief, to such reasonable attorney's fees and costs as determined by the court.

### **25. GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Washington. Contractor submits to the exclusive jurisdiction of the courts in the State of Washington, USA. Venue for any action to enforce or interpret this Agreement shall be in Superior Court for Chelan County, Washington.

The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

**This Contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**

### **26. TIME IS OF THE ESSENCE**

Time is of the essence in performance of the Services. The Contractor agrees to complete the Services to the reasonable satisfaction of the District within the contract agreed upon by the parties.





**27. PRECEDENCE**

In the event there is any conflict between a provision of this Agreement and any statement, term or provision in any exhibit or attachment hereto, this Agreement shall be controlling unless the conflicting provision in the exhibit or attachment expressly states that it supersedes or replaces a specific provision or provisions of the Agreement.

**28. ENTIRE AGREEMENT**

This instrument and any exhibits hereto contain the entire and final Agreement of the parties.

**29. AUTHORIZED SIGNATURES**

Each individual executing this Agreement warrants they are fully authorized to bind their principal to the terms and conditions of this Agreement.

The parties acknowledge and agree that this document may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include those signed via electronic medium or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement on  
8/23/2023 (Effective Date).

PUBLIC UTILITY DISTRICT NO. 1 OF  
CHELAN COUNTY

WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE

By: Catherine Willard

By: Jeff Hugdahl

Name: Catherine willard

Name: Jeff Hugdahl

Title: Senior Fisheries Biologist

Title: Contracts Manager





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## EXHIBIT A SCOPE OF SERVICES

### SA NO. 23-13026

### WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Pursuant to the Agreement 23-13026, the Contractor agrees to perform the Services described below at the hourly rates or price(s) set forth in Exhibit B, Rate Schedule for Services.

#### **1. PROJECT DESCRIPTION**

The District hired Knight Const, & Supply, Inc. (Knight Const.) to complete the Tumwater Dam Foundation Maintenance (Project). The purpose of the Project is to restore the dam's apron and replace eroded material at the top of the spillway. The in-water work being performed requires the relocation of fish present in the isolated work area. The District is contracting with Contractor to relocate fish out of the isolated work areas.

#### **2. SCOPE OF SERVICES AND DELIVERABLES**

Contractor shall provide labor to capture, collect biological data, and relocate any fish present within isolated work areas for the District's Project.

The Knight Const. will install block nets and subsequently relocate them as needed in order to isolate in-water Project work areas from fish. Once the nets are installed, the Contractor will have two roles:

1. Inspecting newly installed or relocated nets.

The District's Program Coordinator will notify Contractor any time the nets are installed or relocated at minimum the day before. If notification is received the day before, contractor will make all efforts to be onsite as soon as possible, but no later than 9:00 a.m. the following day. If any issues come up that interfere with Contractor being on site by 9:00 am the following day, Contractor will notify District Program Coordinator to discuss options.

Contractor shall conduct a visual inspection to evaluate the isolated area for the presence of fish. If any fish species are observed, Contractor will capture the fish using the following methods: hook-and-line, snorkeling, seining, netting and electrofishing. Any fish capture, handling and/or electrofishing required shall be conducted by Contractor in accordance with USFWS protocols (USFWS 2012<sup>1</sup>) and Contractor's Section 10(a)(1)(A) of Permit #16979-3R.

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<sup>1</sup> U.S. Fish and Wildlife Service (USFWS). 2012. Recommended Fish Exclusion, Capture, Handling, and Electroshocking Protocols and Standards. U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, Lacey, WA. June 19, 2012.



Once the fish are captured, Contractor shall enumerate the fish by age class or smolt index (fry, parr, transitional smolt, smolt, adult), identify all salmonids by species and all non-salmonids by genus, record condition of captured fish. Additionally, Contractor shall apply a top caudal fin clip to all juvenile ESA-listed salmonids encountered, excluding fry (<50 mm). MS-222 will be used in order to apply the top caudal fin clip to all parr, transitional smolts, smolts and juveniles. The top caudal clip will be used to collect recapture data and evaluate the effectiveness of the block nets to exclude fish from blocked areas. Contractor will use recapture data to accurately enumerate fish handled to ensure compliance with annual take limits.

Contractor will release any captured fish in the closest available adjacent habitat outside of the isolated Project work area, except for adult lamprey which will be relocated upstream of Tumwater Dam into Lake Yolanda.

## 2. Daily Inspections

In addition, Knight Const. will visually inspect the isolated Project work area daily and anytime the block netting has been modified, disturbed or is suspected of having been disturbed. During the visual inspection, Knight Const. will evaluate if any fish have entered the isolated area. If the District's contractor sees any fish within the netting, or there are concerns some fish may have entered the isolated Project work area, the District's contractor will immediately notify the District. The District will then notify Contractor. Contractor will mobilize to the work area as soon as possible but by no later than 9:00 a.m. the following day, and perform all tasks described in Paragraph 1 above. If any issues come up that interfere with Contractor being on site by 9:00 am the following day, Contractor will notify District Program Coordinator to discuss options.

Contractor will not capture and relocate fish from the isolated Project work areas if Contractor, the District, or the District's contractor determines that conditions are not safe to do so.

## 3. PROJECT LEADERS

The District's Project Leader is Catherine Willard, who may be reached by phone at 509-661-4179, and by email at [Catherine.willard@chelanpud.org](mailto:Catherine.willard@chelanpud.org).

The Contractor's Project Leader is Katy Shelby, who may be reached by phone at 509-664-4312 Ext. 289, and by email at [katy.shelby@dfw.wa.gov](mailto:katy.shelby@dfw.wa.gov).



**EXHIBIT B RATE SCHEDULE FOR SERVICES**  
**SA NO. 23-13026**  
**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

**1. BILLING RATES**

The Contractor shall perform the Services and charge the following rates or price(s) for the Services:

<b>PERSONNEL</b>						
	Scientific Technician 3	190	hours	@	<b>\$30</b>	\$5,694
	Scientific Technician 2	190	hours	@	<b>\$26</b>	\$4,910
	<i>Total</i>	380	hours		<i>Wages Subtotal</i>	\$10,604
<b>BENEFITS</b>						
	OASI/Medical Aid		salary	@	7.65%	\$811
	Retirement		salary	@	10.39%	\$1,102
	Paid Family Medical Leave		salary	@	0.22%	\$23
	Labor and Industries		mo	@	\$48.77	\$98
	Health Insurance		mo	@	\$1,145.00	\$2,290
					<i>Benefits Subtotal</i>	\$4,324
<b>1</b>	<b>WAGES &amp; /BENEFITS TOTAL</b>					<b>\$14,928</b>
<b>2</b>	<b>SUPPLIES/EQUIPMENT</b>					<b>\$0</b>
<b>3</b>	<b>OVERHEAD / INDIRECT 36.03%</b>					<b>\$5,378</b>
<b>4</b>	<b>TOTAL</b>					<b>\$20,306</b>

**2. YEAR-END ACCRUALS**

By December 1, 2023, WDFW shall provide the District with an estimate of the remaining calendar year's anticipated expenses for Services under this Agreement.