

INTERAGENCY AGREEMENT

**Between
Pacific County
and the**

Pacific Conservation District

SMITH CREEK TIDAL RESTORATION FINAL DESIGN AND CONSTRUCTION PARPALA COUNTY ROAD 91190 AT MP 2.43

This agreement is by and between Pacific County, P.O. Box 187, South Bend, WA 98586 (hereinafter "the County") and the Pacific Conservation District, a municipal corporation of Washington State, P.O. Box 336, South Bend, WA 98586 (hereinafter "the District").

WHEREAS, the Washington State Legislature funded the Washington Coast Restoration Initiative (WCRI) to support restoration projects and local jobs on the coast, and the Salmon Recovery Funding Board (SRFB) to fund salmon restoration statewide, and the National Coastal Wetlands Conservation (NCWC) program was created by Congress to conserve and restore wetland habitats nation-wide, and

WHEREAS, the Pacific Conservation District was established in 1948 to implement natural resource conservation practices within the boundaries of the District, and

WHEREAS, the Pacific Conservation District has received WCRI and SRFB funding to replace the Parpala Road tidegates at Smith Creek with a bridge, and is seeking NCWC funding, and

WHEREAS, the Pacific Conservation District completed Phase 1 alternatives analysis and preliminary design working with funding from The Nature Conservancy (TNC) and the COUNTY.

WHEREAS, the Pacific Conservation District worked with TNC and the COUNTY to complete preliminary design for the Smith Creek Tidal Restoration Project, and

WHEREAS, the Pacific Conservation District is working with OTAK, a consulting design firm, to complete the final design work and permitting for the Smith Creek Tidal Restoration Project, and

WHEREAS, the projects are located on Parpala County Road No. 91190 at MP 2.43, and

WHEREAS, the COUNTY has authority under Washington State Law as set forth in RCW 36.74.020 pertaining to operations of public roads;

NOW THEREFORE, in consideration of covenants, conditions, performance and promises hereinafter contained, the parties hereto agree as follows:

1. **PURPOSE**

Conduct studies and investigations to inform completion of designs to replace the Parpala Road tidegates at Smith Creek with a bridge, and to secure all required permits and permissions to conduct this work, and to implement this work and secure all necessary funding to do so.

2. **SCOPE OF THE WORK**

The DISTRICT will enter into agreement with the Recreation and Conservation Office (RCO) to secure WCRI and SRFB funding for work at Smith Creek. The DISTRICT will also enter into agreement with Washington Department of Ecology (WADOE) to secure grant funding from the North American Coastal Watershed Conservation to fund the work at Smith Creek. The DISTRICT shall be responsible for completing the project deliverables as specified in the agreements with RCO and WADOE.

The DISTRICT shall:

- Complete the scope of work and project deliverables by the deadlines as described within the Scope of Work. Should it not be possible to meet the deadlines, the DISTRICT shall notify the County and TNC prior to the due date and propose a revised deadline.
- Include the COUNTY in any communication between RCO or WADOE and the DISTRICT regarding any of the following: Scope of Work, funding or budget, or agreement. This will include forwarding copies of letters, etc., sent from RCO or WADOE to the DISTRICT.
- Respond promptly to any communication from the COUNTY.

The COUNTY shall:

- Provide crews as appropriate to conduct on site survey, and to provide traffic control during design related field investigations.
- Participate as a member of the design team, provide design requirements and review design documents.
- Provide crews to complete sufficient construction work to meet match requirements as specified in 5. FUNDING AND CONTRIBUTIONS.
- Provide construction inspection services
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- Respond promptly to any communication from the DISTRICT.

The DISTRICT conducted preliminary design work at Smith Creek in 2004 that included basic design concepts for the bridge but not the construction of the 800 ft cross levee or the removal of the tidegates.

The DISTRICT completed conceptual designs in 2017 for a 100ft single span bridge, the removal of the tidegates and an 800 ft cross levee to be located on adjacent private property.

The DISTRICT completed preliminary designs in 2019 building upon the conceptual designs noted above.

The DISTRICT will accomplish all work necessary to coordinate, control, permit, design and construct the project in accordance with Pacific County Standards, Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, the Federal Highway Administration Standards, and AASHTO Standard Specifications for Highway Bridges and any other applicable laws and the following requirements:

PRE-CONSTRUCTION

- Portions of the project are located within a Pacific County right of way and will be constructed in conformance to the County Engineer approved design and specification documents cited in the first paragraph of this section of the AGREEMENT.
- A "Pacific County Public Works Permit to Work in County Right of Way" must be obtained before any such work commences.
- Copies of all required permits associated with public improvements must be provided.
- The project affects utility and infrastructure facilities that are located in the public right of way. Issues relating to the design, construction, coordination and/or relocation efforts for the effects caused by the project must be adequately resolved before construction will be allowed to begin in the public right of way.
- A set of plans and specifications meeting County requirements must be submitted to the County Engineer for evaluation and written approval before work may commence.
- Plans and specifications for the public improvement will be designed under the direct supervision of a licensed engineer qualified to perform such work. This design shall conform to the applicable portions and latest editions of (1) County Road Standards, (2) Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, and (3) AASHTO Standard Specifications for Highway Bridges.
 - Important bridge design criteria from these specifications that are noted here for emphasis are:
 - The bridge must be designed to pass a 100-year flood.
 - Appropriate seismic analysis is required.
 - A scour analysis must be performed.
 - Design for bridge foundation elements must be based upon a geotechnical evaluation.
 - A load factor rating analysis conforming to the requirements of the Washington State Department of Transportation is required.

- Guardrail end treatments for the approach to the structure must be part of the design. Approach road lengths necessary to connect the new bridge into the existing road at the appropriate design speed (50 mph for flat terrain) will be designed. In no case will the taper length used to transition the new bridge approaches into the existing roadway be less than 100 feet.
- Additional design requirements
 - Bridge span length shall be greater than 20 feet in order to assure that the structure may be placed on the National Bridge Inventory System.
 - Width of the bridge for vehicular traffic shall be a minimum of 26 feet clear “curb face to curb face” (this width is less than that specified in the County Road Standards, however, 26 feet is the width specified by WSDOT for a similar State and Federally funded County bridge project.
 - Concrete will be the material used for the main features of the bridge unless the engineer can demonstrate a superior alternative.
 - The bridge deck must have a finished wearing course with a 2% crown that is constructed with concrete or asphalt.
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CONSTRUCTION

- A copy of up to date “as built” drawings must be kept at the project site at all times during construction.
- Informational notice of road work shall be published in the official County newspaper and posted at the site along with notification to the local residents that may be impacted by the construction.
- DISTRICT representatives must arrange a pre-construction meeting with the project engineer, contractor, County Engineer, utility representatives and other affected parties before construction will be allowed to begin.
- Proof that the contractor has provided adequate performance and payment security for the project in the amount of the full value of the public improvements portion of the project is required before construction may commence within the County right of way.
- Proof that the contractor has adequate liability insurance (with the County named as additional insured) must be provided before work begins in the public right of way.
- A warranty bond guaranteeing construction of public improvements for two years following final acceptance of these improvements is required.

- Project quality control and material testing must conform to the applicable portions of the Standard Specifications noted above.

POST CONSTRUCTION

- A final walk through must be conducted with the County Engineer, utility representatives and others before public improvements can be considered for acceptance.
- Final acceptance of public improvements must be in writing. Once all requirements are completed, acceptance will be issued in writing.
- A complete set of “as built” drawings must be provided before final acceptance of the public improvement.

3. EVALUATION AND MONITORING

- A. The Conservation District shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this AGREEMENT. The District will retain all books, records, documents and other material relevant to this AGREEMENT for six (6) years after expiration of this AGREEMENT.
- B. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the DISTRICT with respect to all matters covered in this AGREEMENT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this AGREEMENT. These rights shall last for six (6) years after expiration of the AGREEMENT, or from the date final payment hereunder is made, whichever is later.

4. PUBLIC RECORDS ACT

This AGREEMENT and all public records associated with this AGREEMENT shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the DISTRICT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the DISTRICT agrees to make them promptly available to the COUNTY. If the DISTRICT considers any portion of any record provided to the COUNTY under this AGREEMENT, whether in electronic or hard copy form, to be protected from disclosure under law, the DISTRICT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect

or copy the information so identified by the DISTRICT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the DISTRICT (a) of the request and (b) of the date that such information will be released to the requester unless the DISTRICT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the DISTRICT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the DISTRICT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the DISTRICT for releasing records not clearly identified by the DISTRICT as confidential or proprietary. The COUNTY shall not be liable to the DISTRICT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction. The DISTRICT shall, to the maximum extent permissible by law, hold harmless and indemnify the COUNTY against any third-party claims for the release of records that the DISTRICT did not seek a restraining order or otherwise seek to protect disclosure of confidential or privileged records.

5. FUNDING AND CONTRIBUTIONS

The DISTRICT has secured \$1,630,000 in funding from the WCRI program and \$181,850 from SRFB to fund all aspects of this project. An additional \$1,000,000 is being sought from NCWC to secure the funding needed to implement the project. No additional contributions are needed to match this grant.

The DISTRICT previously secured \$172,000 in funding from TNC for Phase 1 of a two-phase design process. \$30,461 in match for Phase 1 funding was provided as follows among the three partner agencies: Pacific County \$20,613.00; Pacific Conservation District \$7,675; CREST \$2,173. This totals \$80,461 in match already provided.

The COUNTY will commit a minimum of \$500 as match to the project which can include (1) donated labor for county engineering work (contract, survey work, traffic control, construction inspection, etc.) and/or (2) donated labor for county crews providing construction services for the project.

The COUNTY will submit documentation for donated labor costs to the DISTRICT on a regular monthly basis.

6. EMPLOYMENT RELATIONSHIPS

The DISTRICT, its employees or agents performing under this AGREEMENT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the DISTRICT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof,

nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the DISTRICT.

7. INDEMNIFICATION/HOLD HARMLESS

- a. **Indemnification by District.** To the fullest extent permitted by law, the DISTRICT agrees to indemnify, defend and hold the DISTRICT and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the DISTRICT, its employees, agents or volunteers or DISTRICT's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) liability based upon the DISTRICT'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the DISTRICT shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the DISTRICT shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the DISTRICT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the DISTRICT are a material inducement to COUNTY to enter into the Contract, are reflected in the DISTRICT's compensation, and have been mutually negotiated by the parties.
- b. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of DISTRICT's indemnity obligations under the Agreement.
- c. **Survival of District's Indemnity Obligations.** The DISTRICT agrees all DISTRICT's indemnity obligations shall survive the completion, expiration or termination of this Contract.

8. ENTIRE AGREEMENT

This AGREEMENT represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any parties hereto.

9. AGREEMENT MODIFICATIONS

The COUNTY and the DISTRICT may, from time to time, request changes in services being performed under this AGREEMENT. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this AGREEMENT. It is mutually agreed and understood that no alternation or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated

herein shall not be binding. For example, and without limitation, an amendment to the AGREEMENT must be approved in writing by the COUNTY and the DISTRICT prior to the COUNTY expending funds for the items covered within that amendment. Costs incurred by the COUNTY in contravention of this paragraph are sole responsibility of the COUNTY.

10. AGREEMENT PERIOD

The provisions of this AGREEMENT are to commence on the date executed and shall continue until December 31, 2023. This notice requirement shall not limit either party's ability to terminate this AGREEMENT as per the conditions specified within Section 11.

11. TERMINATION OF AGREEMENT

The DISTRICT and the COUNTY shall each retain the right to terminate this AGREEMENT at any time and for any reason by submitting written notice of its intention to the other party at least thirty (30) days prior to the specified effective date of such termination. In addition, the COUNTY shall have the right to terminate this contract on ten days communicated written notice if the DISTRICT has violated any of the provisions herein, or if the COUNTY deems the DISTRICT'S performance of its responsibilities herein identified to be substantially unsatisfactory. In either event, on the termination of this AGREEMENT, all finished and unfinished documents and work papers prepared by the DISTRICT pursuant to this AGREEMENT shall, at the option of the COUNTY become its property, and the DISTRICT will be paid for services performed up to the date of the AGREEMENT termination. Notwithstanding the above, the DISTRICT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the AGREEMENT by the DISTRICT. The COUNTY may withhold any payment to the DISTRICT for the purposes set forth until such time as the exact amount of damages due to the COUNTY from the DISTRICT is determined.

12. SPECIAL PROVISION

The failure of the COUNTY to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

13. SEVERABILITY

In the event any provision, or any portion thereof, contained in this AGREEMENT is held to unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

14. DISPUTE RESOLUTION

Exempt as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the DISTRICT, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

15. GOVERNING LAW AND VENUE

This AGREEMENT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the State of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this AGREEMENT.

16. COSTS AND ATTORNEY FEES

In the event legal action is brought with respect to this contract, the prevailing party shall be awarded its costs and attorney's fees in an amount to be determined by the Court as reasonable.

17. ADMINISTRATION

The following individuals are designated to co-administer this AGREEMENT. They shall also serve as their respective party's contact person for any and all communications relative to this AGREEMENT.

The District: Tom Kollasch
Pacific Conservation District
P.O. Box 336
South Bend, WA 98586

The County: Grace Amundsen Barnkow, County Engineer
Pacific County, Department of Public Works
211 North Commercial Street
Raymond, WA 98577

Address changes by either party must be provided by written notice to the other in the manner set forth above.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this _____ day of _____ 2022.

BOARD OF PACIFIC COUNTY
COMMISSIONERS

Lisa Olsen, Chair

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

Clerk of the Board

APPROVED AS TO FORM:

Prosecutor's Office

WSBA#

PACIFIC CONSERVATION DISTRICT

Alan Lougheed, Chair, Board of Supervisors



COUNTY OF PACIFIC

Department of Public Works

211 N Commercial Street, Raymond, WA 98577

Email: pw@co.pacific.wa.us Web: www.co.pacific.wa.us

Willapa Harbor Area
(360) 875-9368
FAX 875-9377

Peninsula Area
(360) 642-9368
FAX 642-9377

Naselle
(360) 484-7368

North
Cove/Tokeland
(360) 267-8368

June 10, 2022

Pacific Conservation District
PO Box 336
South Bend, WA 98586

Attn: Tom Kollasch, Special Projects Manager

Dear Mr. Kollasch,

Pacific County expresses their support for the Pacific Conservation District in putting forth a grant application to fund the removal of tidegates along Parpala Road and installation a bridge over Smith Creek.

This project will replace the existing tidegates, which are failing and non-salvageable. A newly installed bridge will aid in the restoration and conservation of wetlands and open fish passage, along with securing the integrity of Parpala Road.

The failure of these tidegates puts the integrity of Parpala Road at risk, which is a main thoroughway for travelers between the Long Beach Peninsula and Naselle. Loss of access this road would negatively impact those who frequent this area.

We support this project due to the safety of the citizens of Pacific County and in support of wetland conservation and fish passage, in the interest of the County. Pacific County is committed to contributing a minimum of \$500 in matching services to contribute to this project.

Sincerely,

PACIFIC COUNTY
DEPARTMENT OF PUBLIC WORKS

Grace Amundsen Barnkow, PE
County Engineer