Return Document to: Douglas County TLS
140 19th St. N.W.
East Wenatchee, WA 98802
Document Title: Interlocal Cooperation Agreement – 23rd St. NE Reconstruction
Related Documents: N/A
Grantor: Douglas County
Grantee: Douglas County Public Utility District No. 1
Legal Description: N/A
Parcel Number(s): N/A

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN DOUGLAS COUNTY AND DOUGLAS COUNTY P.U.D NO. 1

23rd St. NE Reconstruction CRP 939

This Agreement is made by and between Douglas County, Washington (the "County") and Public Utility District No. 1 of Douglas County (the "PUD").

WHEREAS, the County is a political subdivision of the State of Washington organized and existing under the Washington State Constitution and the laws of the State of Washington, particularly those set forth at RCW Title 36;

WHEREAS, the PUD is a municipal corporation duly organized and existing under the laws of the State of Washington, and located within the County;

WHEREAS, the PUD is a franchise holder having rights to construct and maintain utilities within the County's right-of-ways;

WHEREAS, the County will be conducting right-of-way work in the East Wenatchee area known as the CRP 939 (the "Project") and the Parties wish to enter into an agreement whereby the PUD may conduct utilities work concurrently with the County's right-of-way work;

WHEREAS, the Board of County Commissioners and the PUD's Board of Commissioners have each determined that it is in the best interests of each Party and the residents within each jurisdiction to concurrently and cooperatively conduct all right-of-way and utilities work within the Project;

WHEREAS, the Parties enter into this interlocal cooperative agreement under the authority of RCW Chapter 39.34 for the joint and/or cooperative exercise of these powers;

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

ARTICLE I
PURPOSE

1.01 The purpose of this Agreement is to set forth the terms and conditions under which the Parties will jointly and/or cooperatively conduct right-of-way and utilities work for the Project.

1.02 The PUD has prepared plans, drawings and specifications for its utility work. Such plans drawings and specifications have been or will be incorporated within the plans, drawings and specifications for the Project. A copy of the PUD incorporated plans, drawings and specifications will be attached hereto as Exhibit A. A copy of the baseline bid costs will be attached hereto as Exhibit B once the bid is awarded. The County does not warrant or make any representation as to the sufficiency of such plans, specifications or drawings or the accuracy of the engineer's cost estimate.

1.03 The County has advertised or will advertise for bids on the Project.

1.04 This Agreement is limited to the above purposes and does not apply to any other power, privilege or authority which may be exercised by the Parties.

ARTICLE II
OWNERSHIP AND CONTROL

2.01 For the purposes of administration of the public works contract for the Project, the County shall be "Owner" of the Project and, acting through its County Engineer, shall administer the public works contract for the Project.

ARTICLE III
DUTIES OF THE PARTIES

3.01 The duties of the County shall be as follows:

A. All rights and duties of an Owner for the purposes of administering the public works project for the Project;

B. To promptly notify the PUD of any Request for Information, proposed Change Order, or other contract administration issue affecting the PUD's utility work or the cost of such work;

C. To provide general, day-to-day, on-site inspection of Project work: provided, that the PUD shall make available an inspector having authority to approve the utility work performed for the PUD and shall provide utility inspection services when required by work progress;

D. To administer the public works contract, including Requests for Information, Change Orders, progress payments, substantial completion, final acceptance and contract disputes; and

E. To pay for the following utility work included in the plans, drawings and specifications: installation of PVC conduit, and 7'x7' vault, for which the County will directly pay the contractor for work performed by the contractor and the County will reimburse the PUD for work performed by the PUD. All other work performed for the benefit of the PUD shall be paid for by the PUD.

3.02 The duties of the PUD shall be as follows:

A. To prepare plans, drawings and specifications that may be relied upon by the contractor(s) performing the Project work;

B. To provide an inspector having authority to approve the utility work conducted for the PUD and to provide inspection services when required by work progress;

C. To review all Requests for Information, Change Orders and other issues affecting the PUD's utility work or the cost of such work;

D. To pay the County for all work performed for the benefit of the PUD as billed by the contractor on the Project and approved by the County, except that the work described at 3.01.E will be paid for by the county or reimbursed to the PUD;

E. To pay an administrative fee to the County on each contract payment equal to 5% of the amount paid for work performed for the District or $100.00, whichever is less; and

3.03 Based upon the bids received for the Project, the PUD may wish to delete or change all or a portion of the work to be conducted on its behalf due to the lowest responsible bid exceeding engineer estimates. A proposed change or deletion in the scope of work for the PUD may impact and increase the costs of other work for the County. Any proposed change or deletion of work by the PUD resulting in an increased cost to the County must be agreed upon by the County and the increased costs shall be allocated as the Parties shall agree.

ARTICLE IV
FINANCING AND BUDGETS

4.01 Each Party shall pay for all work performed for such Party pursuant to the Project contract.

4.02 All funds received by the County shall be accounted for in a specific budget designated as "CRP 939 PUD Interlocal Canal Agreement."

4.03 All accounting procedures shall be in accordance with applicable federal and state requirements, Generally Accepted Accounting Principles (GAAP), state law, and methods prescribed by the Washington State Budgeting, Accounting and Reporting System (BARS).

ARTICLE V
ADMINISTRATION

5.01 All administration authority is vested in the County, acting through its County Engineer.

ARTICLE VI
DURATION AND TERMINATION OF AGREEMENT

6.01 This Agreement shall commence pursuant to Paragraph 11.06 and continue in effect until all duties of the Parties under this Agreement have been fully performed and accepted, or such performance has been otherwise expressly waived.

ARTICLE VII
INSURANCE

7.01 **Insurance.** No separate insurance shall be obtained by the County for general public liability and property damage relating to the Project, or for insurance covering improvements during the course of construction. Each Party represents that is has general public liability and property damage insurance.

ARTICLE VIII
INDEMNITY

8.01 **Claims.** Any and all tort claims and contract claims relating to the project shall be received, reviewed and investigated by the County. For claims directly or indirectly relating to work performed for the benefit of the PUD, the County shall provide copies of all such claims to the PUD within three (3) business days after receipt.

8.02 **Tort Claims.** To the extent of its comparative liability, each Party shall indemnify, defend and hold the other Party, its departments, elected and appointed officials, employees, and agents, harmless from and against any and all claims, damages losses and expenses, for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, which are alleged or proven to be caused in whole or in part by a negligent act or omission of the Party, its officers, directors, and employees.

8.03 **Contract Claims.** The PUD shall be solely liable for any contractual claim related to work paid for or reimbursed by the PUD during the Project. The County shall

not be liable for such claims, even though the County is administering the Project. The County shall be indemnified, held harmless and defended against such claims by the PUD. The County is not acting as a surety or guarantor for work paid for or reimbursed by the PUD.

8.04 **Waiver of Subrogation.** Each Party waives subrogation, indemnity and claims for contribution against the other Party for property damages, losses or expenses paid by insurance to the extent that applicable policies permit waiver.

8.05 **Participation by Party – No Waiver**. Each Party reserves the right to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of the other Party's indemnity obligations under this Agreement.

8.06 **Survival of Indemnity Obligations**. All indemnity obligations shall survive the completion, expiration or termination of this Agreement.

8.07 **Indemnity by Subcontractors**. In the event the PUD enters into subcontracts to the extent allowed under this Agreement, the PUD's subcontractors shall indemnify the County on a basis equal to or exceeding PUD's indemnity obligations to the County.

ARTICLE IX
PERFORMANCE OF AGREEMENT

9.01 **Compliance with All Laws.** Each Party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

9.02 **Maintenance and Audit of Records.** Each Party shall maintain books, records, documents and other materials relevant to its performance under this Agreement which sufficiently and accurately reflect any and all direct and indirect costs and expenses incurred or paid in the course of performing this Agreement. These records shall be subject to inspection, review and audit by either party or its designee, the Washington State Auditor's Office, and authorized federal agencies. Each party shall retain all such books, records, documents and other materials for six (6) years following the termination of this Agreement.

9.03 **On-Site Inspections.** Each Party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances.

9.04 **Rights in Data and Work Product.** Unless otherwise agreed upon by the parties in writing, all data, reports, documents, pamphlets, advertisements, surveys, studies, computer programs, films, tapes, sound reproductions, and other work product which originates from the performance of this Agreement shall be owned by the creating Party.

9.05 **Improper Influence.** Each Party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each Party agrees, warrants and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

9.06 **Conflict of Interest.** The elected and appointed officials and employees of the Parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

ARTICLE X
DISPUTES

10.01 **Time.** Time is of the essence of this Agreement.

10.02 **Conflict**. In the event of conflict among the terms and conditions of this Agreement and federal, state or local law, the inconsistency shall be resolved by giving precedence of interpretation in the following order:

1. Applicable Washington case law, statutes and regulations; then
2. Applicable federal case law, statutes and regulations; then
3. The specific terms and conditions of this Agreement attached hereto as appendices; then
4. The terms and conditions of this Agreement.

10.03 **Waiver Limited.** A waiver of any term or condition of this Agreement must be in writing and signed by the waiving Party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

10.04 **Compliance Review Process and Corrective Action.** In the event of non-compliance with any term or condition of this Agreement, a Party may provide written notice to other Parties of non-compliance. The non-compliant Party shall have thirty (30) days from receipt of such written notice to implement fully corrective action and to provide adequate assurances of continuing future compliance: provided, that the non-compliant Party shall have only three (3) business days to demonstrate its compliance and to provide adequate assurances if the non-compliance presents a clear

and imminent danger to the health and well-being of the public, a clear violation of federal or state laws, rules or regulations specifically found to be of imminent concern and requiring immediate corrective action, a breach of the time limits for performance under this Agreement, or an imminent loss of federal or state funding.

10.05 **Dispute Resolution.**

A. **Informal Mediation.** Disputes regarding this Agreement, other than those which relate to non-compliance requiring only a ten (10) day notice pursuant to the preceding subparagraph, shall be informally mediated by a panel comprised of a Utility elected official appointed by the Utility a member of the County's Board of Commissioners appointed by the Board, and a third person agreed upon by the two. The panel shall attempt to resolve the dispute between the Parties through discussion and negotiation among the panel members. There shall be no presentation of evidence or argument to the panel. Decisions of the panel shall not be binding on the Parties and all discussions and negotiations among the panel members shall remain confidential and privileged.

B. **Arbitration.** In the event that informal mediation does not resolve a dispute between the Parties, the dispute shall be submitted to and resolved by arbitration pursuant to RCW Chapter 7.04 as provided in this subparagraph. Such arbitration shall be before one (1) disinterested arbitrator, if one can be agreed upon by the Parties. If one arbitrator cannot be agreed upon, then the Utility shall appoint one arbitrator, the County shall appoint one arbitrator, and a third arbitrator shall be appointed by the two arbitrators so appointed. If all arbitrators have not been appointed within ten (10) days after a written notice of demand for arbitration is served by one Party on the other, then either Party may apply to the Douglas County Superior Court, upon not less than five (5) days written notice to the other Party, for appointment of the necessary arbitrators remaining to be appointed. The judicial appointment(s) shall be final, conclusive and binding. Remedies, both legal and equitable, including injunctive relief, may be granted by the arbitrator. The decision shall be final, conclusive and binding on the Parties and a judgment confirming the decision may be entered in the Douglas County Superior Court. Each Party shall pay the entire cost and expense of an arbitrator appointed by that party or approved by the Court for that Party and shall pay one half of the cost and expense of a third arbitrator. In the event only a single arbitrator is appointed to resolve the dispute each party shall pay one half of the cost and expense of the single arbitrator.

Any arbitration proceeding commenced to enforce or interpret this Agreement shall be brought within one year after the initial occurrence giving rise to the claim, dispute or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute or issue was continuing in nature. Claims, disputes or issues arising more than one year prior to a written request or demand for arbitration issued under this Agreement are not subject to arbitration.

10.06 **Attorney's Fees**. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each Party shall pay its own respective attorney's fees.

10.07 **Governing Law and Venue**. This Agreement shall be governed exclusively by the laws of the State of Washington. The Douglas County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

ARTICLE XI
GENERAL PROVISIONS

11.01 **Assignment.** The Parties may not assign any rights or delegate any duties under this Agreement, whether by assignment, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

11.02 **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties. There are no understandings or agreements between parties other than those set forth in this Agreement and in the exhibits. No other statement, representation or promise has been made to induce the Parties to enter into this Agreement.

11.03 **Modification.** This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the Parties and approved by each Party's legislative authority.

11.04 **Invalid Provisions**. The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

11.05 **Counterparts.** This Agreement may be executed by the parties using duplicate counterparts.

11.06 **Filing and State Approval.** Pursuant to RCW 39.34.040, this Agreement shall be filed with the County Auditor and the PUD's Clerk of the Board prior to its entry into force. To the extent any state officer or agency has control over the services or facilities which may be the subject of this Agreement, then this Agreement shall be submitted to such state officer or agency for approval pursuant to RCW 39.34.050 prior to its entry into force.

Dated: _____

DOUGLAS COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

_____
Steve Jenkins, Chair

_____
Dale Snyder, Vice Chair

_____
Ken Stanton, Member

ATTEST:

_____
Clerk of the Board

APPROVED AS TO FORM:

_____
Prosecuting Attorney

DOUGLAS COUNTY P.U.D. NO. 1

Dated: _____

_____
William C. Dobbins, General Manager

LEGEND

- 4" ELECTRICAL CONDUIT SCH. 40 PVC (PUD)
- 3" ELECTRICAL CONDUIT SCH. 40 PVC (PUD)
- 4" TELEPHONE CONDUIT SCH. 40 PVC (FRONTIER)
- 2" ELECTRICAL/CATV CONDUIT SCH. 40 PVC (PUD/CHARTER)

ELECTRICAL CONDUIT INSTALLATION NOTES:
1. DOUGLAS COUNTY PUBLIC UTILITY DISTRICT (DCPUD) TO REMOVE UNDERGROUND CONDUCTOR.
2. DOUGLAS COUNTY PUD TO INSTALL NEW UNDERGROUND CONDUCTOR.
3. ALL CONDUIT TO BE INSTALLED BY CONTRACTOR.
4. NEW 7'X7' VAULT TO BE PROVIDED AND PLACED ON SITE BY DOUGLAS COUNTY PUD AND INSTALLED BY CONTRACTOR. GRADES TO BE SET BY DOUGLAS COUNTY SURVEY.
5. ALL DCPUD CONDUIT TO BE PROVIDED BY THE CONTRACTOR.
6. CONDUIT SHALL BE BURIED AT 4' DEPTH IN ALL AREAS EXCEPT UNDER CANAL. (SEE DETAIL "C" SHEET C4 FOR BURY DEPTH UNDER CANAL.)
7. ALL TRENCHING AND BACKFILLING BY CONTRACTOR.
8. CHARTER TO PROVIDE (2) 2" CONDUIT AND CONTRACTOR TO INSTALL.
9. FRONTIER TO PROVIDE (2) 4" CONDUIT AND CONTRACTOR TO INSTALL.
10. SWEEP CONDUIT AT POLES TO 1' ABOVE EXISTING/PROPOSED GROUND.
11. CONTRACTOR SHALL COORDINATE ALL WORK WITH DCPUD, CHARTER, AND FRONTIER DURING CONSTRUCTION.

Wick, Timothy D

Harper, Brian S & Heather R

INSTALL 7'LX7'WX6'H ELECTRICAL VAULT (SUPPLIED BY DCPUD)

DCPUD TO INTERCEPT (4)4" EXISTING ELECTRICAL CONDUIT (2)2" FIBER OPTIC CONDUIT AND COORDINATE REROUTE TO NEW ELECTRICAL VAULT. FIBER OPTIC CONDUIT TO BYPASS VAULT.

INSTALL (1)3" AND (1)2" CONDUITS FROM THIS SECONDARY POLE ACROSS CANAL EAST TO NEW POLE. SWEEP UP CONDUIT 1' ABOVE EXISTING GROUND.

NEW SECONDARY POLE. (BY OTHERS)

REMOVE EXISTING POLE. (BY OTHERS)

PHONE BOX TO BE RELOCATED (BY OTHERS)

NEW CATV BOX (BY OTHERS)

CANAL ACCESS ROAD

CANAL FLOW

10 C.Y. CONTROLLED DENSITY FILL

SAWCUT 15 L.F. OF CONCRETE CANAL LINER.

DO NOT DISTURB IRRIGATION PUMP AT THIS LOCATION.

NORTH CANAL CROSSING. (SEE DETAIL F, "TYPICAL CANAL LINER REPAIR SECTION" THIS SHEET.)

NEW UTILITY POLE. (BY OTHERS)

EXISTING POWER POLE

EXISTING SIDEWALK

SAWCUT 15 L.F. OF CONCRETE CANAL LINER

EXISTING EDGE OF ASPHALT

NEW 12" CPSSP (SEE SHEET C3)

14+00

15+00

16+00

A LINE

23rd St NE

EXISTING EDGE OF ASPHALT

NEW IRRIGATION PIPES (SEE SHEET C3)

EXISTING POLE TO BE REMOVED. (BY DCPUD)

NEW 18" CPSSP (SEE SHEET C3 FOR CONSTRUCTION INSTALLATION)

N Baker Ave

CANAL ACCESS ROAD

CANAL FLOW

Douglas County

EXISTING DETENTION POND

SCALE IN FEET
0 10 20

F - REINFORCED CONCRETE DITCH LINER SECTION - NORTH CROSSING

NO SCALE

CONTROLLED DENSITY FILL TO BE INSTALLED TO BOTTOM OF CANAL LINER

CANAL BOTTOM

DRILL AND EPOXY REBAR INTO EXISTING CONCRETE DITCH LINER

#4 REBAR 18" O.C. EACH WAY

CANAL LINER BOTTOM

EXISTING CONCRETE DITCH LINER BOTTOM

ELECTRICAL SYSTEM (NORTH CANAL CROSSING)

EXCAVATE UNDER EXISTING REINFORCED CONCRETE DITCHLINER 1' AND KEY TRANSITION SECTION TO EXISTING LINER.

(1) 2" PUD
(1) 3" PUD
(2) 4" FRONTIER
(4) 4" PUD
(2) 2" CHARTER
(2) 2" PUD FIBER

NO.	REVISION	BY	DATE

PLOT DATE: 8-8-13
DESIGNER:
DRAWN BY:

23rd St Reconstruction
Canal Crossing

DOUGLAS COUNTY
TRANSPORTATION & LAND SERVICES
140 19th St. NW Ste. A, E. WENATCHEE, WA 98802 PH: 509.884.7173

POWER AND COMMUNICATION SYSTEM PLAN AND DETAIL

DRAWING NAME: 939_1_PP
PROJECT NO. CRP 939_1

C5