SPECIAL MEETING OF THE BOARD OF DIRECTORS
AGENDA
CASCADE WATER ALLIANCE
520 - 112TH Avenue N.E., Suite 400, Bellevue
February 28, 2018
3:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT

4. EXECUTIVE SESSION

5. APPROVAL OF AGENDA

6. CHIEF EXECUTIVE OFFICER’S REPORT – None.

7. CONSENT ITEMS – None.

8. OTHER ACTION ITEMS
   a. Motion to adopt Resolution 2018-05 authorizing the Chief Executive Officer to execute four easements to be granted by Cascade Water Alliance (Cascade) to the U.S. Army Corps of Engineers (Corps), the Agreement for Additional Work, the Operations Agreement and the Dispute Resolution Procedures Agreement between the Corps and Cascade related to the Corps’ Mud Mountain Dam Fish Passage Project, at a cost to Cascade not to exceed six (6) million dollars.

9. STAFF PRESENTATIONS – None.

10. COMMITTEE REPORTS – None.

11. NEW BUSINESS – None.

12. NEXT REGULAR MEETING – March 28, 2018 – Cascade Office – 3:30 p.m.

13. ADJOURN
AGENDA MEMORANDUM

SUBJECT

Motion to adopt Resolution 2018-05 authorizing the Chief Executive Officer to execute four easements to be granted by Cascade Water Alliance (Cascade) to the U.S. Army Corps of Engineers (Corps), the Agreement for Additional Work, the Operations Agreement and the Dispute Resolution Procedures Agreement between the Corps and Cascade related to the Corps’ Mud Mountain Dam Fish Passage Project, at a cost to Cascade not to exceed six (6) million dollars.

BACKGROUND

Cascade has negotiated a package of agreements with the Corps related to the Corps’ Mud Mountain Dam Fish Passage Project (MMD FPP). The MMD FPP includes:

- Demolition of the existing 100+ year old barrier structure and the 70 year old fish trap and haul facility located in Buckley
- Construction of a new barrier structure and fish trap and haul facility designed to meet the conditions of the NMFS Biological Opinion
- Construction of improvements to the Cascade intake and diversion facilities (the Cascade Intake Improvements)

The Agreements that require Board authorization are:

- Easements to be granted by Cascade to the Corps
  - A perpetual easement for the new Corps fish passage facility (FPF Easement)
  - A perpetual levee easement
  - Two temporary work area and access easements.
- Agreement for Additional Work (AAW)
- Dispute Resolution Procedures Agreement (DRPA).

The Agreements provide:

- the Corps long-term access to Cascade property for operation of the MMD FP;
- the Corps short term access to Cascade property for construction of the MMD FPP;
- for Cascade participation in construction management activities of the MMD FPP;
- for the Corps to construct the Cascade Intake Improvements portion of the MMD FPP and for Cascade to purchase those improvements when constructed under RCW 39.32.07Corp
- for coordination/communications of operational activities during and after construction of the MMD FPP;
- for continued water supply to the Cascade intake during construction of the MMD FPP except for pre-approved limited windows; and
- for continued access for Cascade to its facilities during construction of the MMD FPP.

Cascade’s primary objectives in negotiating these agreements were:

- Ensuring the Corps constructs the MMD FPP, including the Cascade Intake Improvements per the agreed design in a reasonable time frame;
• Ensuring the Corps at all times operates the MMD FPP with appropriate coordination/communication with Cascade;

• Protecting Cascade’s ability to fully utilize its Water Rights over both the short and long term.

Cascade’s objectives have been addressed in the Agreements as follows:

• **Construction**
  - Coordinated design of MMD FPP, including Cascade Intake Improvements in the construction plans that have been put to bid by the Corps;
  - FPF Easement is tied to the agreed design;
  - AAW provides that Cascade’s review and approval is required for any changes to Cascade Intake improvements portion of the MMD FPP and other improvements on left bank of river;
  - AAW provides for Cascade participation in contractor communications and construction management meetings;
  - There is no agreement to a time for the Corps to complete construction, but the MMD FPP has funding for initial construction, has been granted Continuing Contract Approval authorization and the Corps is under a Federal District Court consent decree that requires the FPF Project to be complete by December 2020. The Solicitation requires the selected contractor to complete the entire project (including the Cascade Intake Improvements) by July 2025.

• **Operations**
  - OA requires coordination of MMD FPP operations and Cascade operations and the development of a mutually acceptable Joint Operations Protocol Manual to be followed;
  - OA includes a detailed Communications and Coordination Protocol with quarterly planning meetings, weekly meetings of operations staff, and daily telephone calls to confirm all planned activities;
  - OA provides for expeditious elevation to the CEO and Corps District Commander of operational disputes.

• **Water Rights**
  - Both the FPF Easement and OA acknowledge the reservation of Cascade’s water rights and require the Corps to maintain a pool behind the barrier structure within a normal operating range sufficient to allow Cascade to fully exercise its water rights;
  - Any dispute over whether the Corps operations is interfering or has interfered with Cascade’s ability to fully exercise its water rights is subject to the DRPA;
    - The DRPA includes:
      • Expedited management elevation of disputes to the CEO and Corps Division Commander;
      • Confidential expedited non-binding arbitration by a neutral 3rd party;
      • When a dispute arises from the Corps’ actual or proposed change in its operations, the Corps’ agrees it will not implement the changes until the dispute resolution process has been completed.

Benefits/Value to Cascade include:

• Implementing Cascade Intake Improvements in partnership with the MMD FPP (as opposed to as a “stand alone” project) estimated to save $1 to $2 million
• Eliminates potential of Cascade responsibility for future major repair/replacement of Barrier Structure (estimated potential savings of $5 - $15 million)
• Operational NPV cost savings of $1 to $2 million due to
  o Reduced sediment removal requirements
  o Operational cost savings

PROCUREMENT PROCESS

By Resolution 2018-04, the Board declared the property interests to be conveyed to the Corps through the above described Agreements to be surplus to the need of Cascade and authoring the CEO to convey such surplus property to the Corps, conditioned upon obtaining acceptable construction and operations agreements from the Corps. Cascade will acquire the Cascade Intake Improvements pursuant to the AAW under the authority of RCW 39.32.070.

FISCAL IMPACT

The total cost for Cascade’s acquisition of the Cascade Intake Improvements portion of the MMD FPP is estimated to be between $4.5 and $6.0 million. Funding will be from the Capital Budget for 2021 through 2025, depending on the schedule of the contractor selected by the USACE.

Implementation of the Cascade Intake Improvements has an estimated potential NPV operational cost savings of $1 to $2 million.

<table>
<thead>
<tr>
<th>Budget Line</th>
<th>2021 ~ 2025 Capital Budget</th>
<th>Spent and Committed to Date</th>
<th>Available Budget</th>
<th>This Action</th>
<th>Remaining Balance</th>
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<td>Cascade Intake Improvements</td>
<td>$6.0 million</td>
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OPTIONS

1. Adopt Resolution 2018-05 authorizing the Chief Executive Officer to execute four easements to be granted by Cascade Water Alliance (Cascade) to the U.S. Army Corps of Engineers (Corps), the Agreement for Additional Work, the Operations Agreement and the Dispute Resolution Procedures Agreement between the Corps and Cascade related to the Corps’ Mud Mountain Dam Fish Passage Project, at a cost to Cascade not to exceed six (6) million dollars.

2. Do not adopt Resolution 2018-05 authorizing the Chief Executive Officer to execute agreements between the Corps and Cascade, and provide alternate direction to staff.

RECOMMENDED ACTION

Adopt Resolution 2018-05 authorizing the Chief Executive Officer to execute four easements to be granted by Cascade Water Alliance (Cascade) to the U.S. Army Corps of Engineers (Corps), the Agreement for Additional Work, the Operations Agreement and the Dispute Resolution
Procedures Agreement between the Corps and Cascade related to the Corps' Mud Mountain Dam Fish Passage Project, at a cost to Cascade not to exceed six (6) million dollars.

ATTACHMENTS

1. Resolution 2018-05.
2. Easements to be granted by Cascade to the Corps.
   - A perpetual easement for the new Corps fish passage facility (FPF Easement).
   - A perpetual levee easement.
   - Two temporary work area and access easements.
3. Agreement for Additional Work (AAW).
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CASCADE WATER ALLIANCE,
A WASHINGTON MUNICIPAL CORPORATION
AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE
EASEMENTS AND AGREEMENTS WITH THE UNITED STATES ARMY CORPS OF
ENGINEERS RELATED TO THE CORPS’ MUD MOUNTAIN DAM FISH PASSAGE PROJECT

WHEREAS, the Cascade Water Alliance (“Cascade”) is a Washington municipal
 corporation formed under authority of the Joint Municipal Utilities Authority Act (Chapter 39.106
 RCW) to provide water supply to its Members; and

WHEREAS, Cascade owns property necessary for the United States Army Corps of
 Engineers’ (“Corps”) construction, access and operation of the Corps’ Mud Mountain Dam Fish
 Passage Project (“MMD FPP”), which includes: demolition of the existing 100+ year old barrier
 structure and the 70 year old fish trap and haul facility located in Buckley; construction of a new
 barrier structure and fish trap and haul facility designed to meet the conditions of the NMFS
 Biological Opinion; and construction of improvements to the Cascade intake and diversion
 facilities (“the Cascade Intake Improvements”);

WHEREAS, the Cascade Board of Directors (“Board”) now desires to authorize the Chief
 Executive Officer to execute four easements and 3 other agreements between Cascade and the
 Corps necessary for the MMD FPP.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
CASCADE WATER ALLIANCE, as follows:

Section 1. Adoption. The Board adopts this Resolution authorizing the Chief Executive
Officer to execute four easements to be granted by Cascade Water Alliance to the U.S. Army
Corps of Engineers, the Agreement for Additional Work, the Operations Agreement and the
Dispute Resolution Procedures Agreement between the Corps and Cascade related to the
Corps’ Mud Mountain Dam Fish Passage Project, at a cost to Cascade not to exceed six (6)
million dollars.
Section 2. Effect. This Resolution shall be in full force and effect on the date of its adoption.

ADOPTED AND APPROVED by the Board of Directors of the Cascade Water Alliance at a regular meeting thereof, held on the 28th day of February 2018.

CASCADE WATER ALLIANCE

________________________________________
John Stokes, Chair

Attest – Chuck Clarke, Chief Executive Officer

Penny Sweet, Vice Chair

________________________________________
Angela Birney, Secretary/Treasurer

Members
Yes _______
No _______

Demand Share
Yes _______%
No _______%

Include in CWAC?

_ X_ Yes
   No
Grantor: CASCADE WATER ALLIANCE

Grantee: UNITED STATES OF AMERICA

Abbreviated Legal Description: Portions of: SW1/4 of SE1/4, and SE1/4 of SW1/4, Section 35, T 20 N, R 6 EWM; and NW1/4 of NE1/4, Section 2, T 19 N, R 6 EWM, King and Pierce Counties, Washington

Tax Parcel #: PTNS 30619021006, 352006-9025-1, and 021906-9002-00

EASEMENT DEED

The Grantor, the Cascade Water Alliance, a Washington municipal corporation, for value received, the receipt of sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the United States of America and its permitted assigns, a perpetual, exclusive, and assignable (as provided herein) easement and right-of-way for the uses and purposes set forth hereinafter in connection with the Mud Mountain Dam Fish Passage Project, in, upon, over and across the following described parcel of land situate, lying and being in the Counties of King and Pierce, State of Washington (the “Easement”):

THE LEGAL DESCRIPTION IS ATTACHED AS EXHIBIT A

This Conveyance is for the Department of the Army.

The Easement and rights hereby granted include the right, power, privilege and easement in, on, over and across the above described property for the following purposes:

Subject to GRANTOR’S reserved rights described herein, a perpetual, exclusive easement and right-of-way for the Mud Mountain Dam Fish Passage Project in, on, over, and across the land described in Tract No. B101E-1 (the "Premises") for the location, construction, operation, maintenance, alteration, patrol and replacement of a barrier dam and fish trap facilities as currently authorized by Congress under the Flood Control Acts of 1936 and 1938 as described in those contract drawings and specifications in Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017, as amended, (“the Project”) as those plans may be
modified pursuant to the terms of any agreements between the parties, provided any final interpretation of those contract drawings and specifications in Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017, as amended, and decisions regarding modification once construction commences or for post construction modification shall, subject to the terms of any other agreements between the parties, be vested in the GRANTEET, provided further any such agreements shall not impair or otherwise terminate the rights granted herein which include channels and other structures to impound, direct and appropriate water for Project purposes, but not including any rights to develop the hydroelectric power potential at the Premises and the Project; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving to the GRANTOR, its successors and assigns, all remaining rights and privileges including, without limitation the right to divert and of beneficial use of water as provided and at the location identified in State of Washington Water Right Permit No. S2-29920(A) - (B) (priority date June 20, 2000) and Certificate of Change of Water Right No. S2-CV1-2P168(B) (priority date April 17, 1895) ("GRANTOR’S Water Rights") and the right to access, operate, use, patrol, maintain, repair, upgrade, restore, reconstruct and replace GRANTOR’S headworks and associated facilities located within or adjacent to the Premises.

This Easement requires that GRANTEET, upon completing construction of the Project, will maintain a pool behind the Project’s barrier structure with a surface water operating range elevation sufficient to allow the GRANTOR to fully exercise its reserved Water Rights as provided above, except for infrequent and limited duration sluicing operations or other required maintenance pursuant to any agreements between the parties.

Barrier dam and fish trap facilities include, but are not limited to, abutment walls, piers, hinged crest gates, a spillway, concrete aprons, rip rap blankets, rock, gravel, cobbles, a maintenance deck and piping, channels and other structures to impound, direct, or appropriate water; utilities, security features, fish elevator, sorting table, truck bays, fish attraction mechanisms, a fish conveyance system, an operations room and other appurtenances to capture, count, sort, haul and transport fish.

In exercising its rights under this Easement, GRANTEET shall comply with all applicable laws and regulations now or hereafter enacted pertaining to the Project. Further, GRANTEET is responsible for meeting all applicable federal, state and local safety and other codes, and for obtaining all applicable federal, state and local permits, licenses, or other authorizations required for the construction and operation of the Project including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare to the extent Congress has waived sovereign immunity. Nothing in this Easement shall be interpreted as a waiver of sovereign immunity by the United States.

GRANTOR does not assume any liability for injury or damage to any person or property incident to or that may arise during and in consequence of the GRANTEET’s or its assignees use, occupancy and enjoyment of the Premises or their construction of, erection of, maintenance of,
or their failure to properly and safely construct, operate and maintain the Project or to use and occupy said Premises.

GRANTEE shall construct, operate and maintain the Project, consistent with the purposes of the Project, in a safe, careful, and workmanlike manner so as to avoid damage to the GRANTOR'S headworks or interference with the GRANTOR'S operations and to prevent injury to property of the GRANTOR and to the life and property of third persons. GRANTEE agrees, to the extent permitted by federal law, to indemnify and hold harmless GRANTOR, its members, and its elected or appointed officers, officials, and employees from any damage caused by GRANTEE, its employees and/or contractors on the Premises, in the exercise of rights under this Easement, provided, no obligation or payment by GRANTEE may exceed the amount of funds authorized and available for such purpose at the time of the damage.

This conveyance is a Bargain and Sale Deed pursuant to RCW 64.04.040 and accordingly, GRANTOR by these presents expressly limits the covenants of this Easement to those herein expressed and excludes all covenants arising or to arise by statutory or other implication and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said GRANTOR and not otherwise, GRANTOR will forever warrant and defend the said described real property.

GRANTEE shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Easement to an entity authorized by Congress to own or operate the Project on behalf of or in place of GRANTEE and such entity owns the Project or is otherwise contractually obligated to GRANTEE to operate the Project (a "Permitted Assignment"). Except for a Permitted Assignment, all other assignments, apportionments or transfers shall require GRANTOR's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Subject to and without limiting the generality of the foregoing, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

In any litigation or other proceeding arising out of this Easement, the substantially prevailing party shall be entitled to an award of its' reasonable attorneys’ fees and other costs incurred therein to the extent permitted by federal law.

Invalidation of any of the provisions contained in this Easement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

In the event the Project is de-authorized by Congress, this Easement shall terminate and subject to any conditions or restrictions imposed by Congress and compliance with applicable
environmental laws, the GRANTEE shall have the right to remove the improvements or abandon them in place without payment of further compensation to the GRANTOR. Nothing in this Easement shall be interpreted to require obligations or payments by the GRANTEE in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 or shall imply that the Congress will at a later date authorize and appropriate funds to meet deficiencies.

GRANTOR alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against GRANTEE’s interest in the Premises, or against any of GRANTOR’s real property as a result of the Easement herein granted. GRANTEE shall not cause liens of any kind to be placed against the Premises or any of GRANTOR’s other real property.

GRANTEE’s obligation to pay or reimburse any money under this Easement is subject to express Congressional authorization and the availability of fund appropriated for this purpose to the Department of the Army, and nothing in this Easement shall be interpreted to require obligations or payments by the GRANTEE in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. The provisions of this clause are without prejudice to any rights GRANTOR may have to make a claim under applicable laws for any other damages than provided herein. Nothing in this Easement may be considered as implying that the Congress will at a later date authorize and appropriate funds to meet deficiencies.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this _____ day of ______________, 2018.

Grantor: CASCADE WATER ALLIANCE

By: ___________________________
Title: __________________________

Grantee: THE UNITED STATES OF AMERICA

______________________________
U.S. Army Corps of Engineers
Todd L. Czarnecki
Chief, Real Estate
Real Estate Contracting Officer
Northwestern Division
STATE OF WASHINGTON
) ) ss
County of King
)

On this ___ day of ________________, 2018, before me the undersigned, a Notary Public for the State of Washington, duly commissioned and sworn, personally appeared ____________________, to me known to be the Chief Executive Officer, who executed the foregoing instrument and acknowledged to me that he was authorized to execute said instrument on behalf of the Cascade Water Alliance for the uses and purposes mentioned therein.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature of Notary]
[Print Name of Notary]
Notary Public in and for the State of Washington
Residing at: ________________________________
My Commission expires: ______________________

STATE OF OREGON
) ) ss
County of Multnomah
)

On this ___ day of ________________, 2018, before me the undersigned, a Notary Public for the State of Oregon, personally appeared Todd L. Czarnecki and known to me to be the persons whose names are subscribed to the within and foregoing instrument and being first duly sworn, acknowledged to me that they executed the same as their free and voluntary act for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

Notary Public for the State of Oregon
Residing at: ________________________________
My Commission expires: ______________________
LEGAL DESCRIPTION

A parcels of land situated in the SW1/4, SE1/4, and SE1/4, SW1/4, Section 35, Township 20 North, Range 6 East, and the NW1/4, NE1/4 Section 2, Township 19 North, Range 6 East, W.M. in King and Pierce Counties, Washington, more particularly described in 4 parts as follows:

Part 1:

Lot 2 King County BLA # L09L0007.

Part 2:

The SW1/4, SW1/4, SE1/4 Section 35, Township 20 North, Range 6 East in King County. Except Lot 2 & Lot 3 King County BLA # L09L0007.

Part #3:

That portion of the NW1/4, NW1/4, NE1/4 of said Section 2 in King County, also known as King County Assessor's parcel # 0219069002.

Part #4:

That portion of Pierce County Assessor's parcel # 0619021006 more particularly described as:

**Beginning** at the Northwest corner of said parcel # 0619021006;

Thence south 01°26'24" east, a distance of 12.26 feet more or less;
Thence south 57°55'06" east, a distance of 188.04 feet more or less;
Thence south 64°24'01" east, a distance of 118.45 feet more or less;
Thence south 27°28'09" west, a distance of 24.00 feet more or less;
Thence south 71°59'56" east, a distance of 84.84 feet more or less;
Thence north 38°00'48" east, a distance of 24.39 feet more or less;
Thence south 84°21'06" east, a distance of 62.90 feet more or less;
Thence south 25°36'30" east, a distance of 78.83 feet more or less;
Thence south 76°37'38" east, a distance of 135.25 feet more or less;
Thence south 58°48'02" east, a distance of 183.79 feet more or less;

By: OJV July 10 2017
Chkd: JEF July 18 2017
Map: CWA_B101E_1.mxd
CAD/GIS: \Mud Mountain Dam\Tasks\MMDFP 2015\CWA-legals
Doc: 002482.docx
Exhibit A
Mud Mountain Dam Fish Passage
NSE Fish Facility Easement from CWA

Tract B101E-1
± 8.41 acs

Thence north 23°53'40" east, a distance of 138.22 feet more or less, to the north line of said parcel;

Thence northwesterly, along the north line of said parcel, also being the county boundary line, to the true **Point of Beginning**.

**Containing 8.41 acres, more or less.**

This legal description is not based on an actual survey.

Coordinates and basis of bearing are based on the Washington State Plane Coordinate System, North Zone, NAD 27, US feet.

By: OJV July 10 2017
Chkd: JEF July 18 2017
Map: CWA_B101E_1.mxd
CAD/GIS: \\Mud Mountain Dam\Tasks\MMDPP 2015\CWA-legals
Doc: 002482.docx
Grantor: CASCADE WATER ALLIANCE

Grantee: UNITED STATES OF AMERICA

Abbreviated Legal Description: Portions of: SW1/4 of SE1/4, Section 35, T 20 N, R 6 EWM; and NW1/4 of NE1/4, Section 2, T 19 N, R 6 EWM, King County, Washington

Tax Parcel #: PTNS 352006-9025-1, 021906-9003-09

EASEMENT DEED

The GRANTOR, the Cascade Water Alliance, a Washington municipal corporation, for valuable consideration the receipt of sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the United States of America and its permitted assigns, a perpetual, and assignable (as provided herein) easement and right-of-way for the uses and purposes set forth hereinafter in connection with the Mud Mountain Dam Fish Passage Project, in, upon, over and across the following described parcel of land situate, lying and being in the Counties of King and Pierce, State of Washington (the “Easement”):

THE LEGAL DESCRIPTION IS ATTACHED AS EXHIBIT A

This Conveyance is for the Department of the Army.

The Easement and rights hereby granted include the right, power, privilege and easement in, on, over and across the above described property for the following purposes:

Subject to GRANTOR’S reserved rights described herein, a perpetual, easement and right-of-way for the Mud Mountain Dam Fish Passage Project in, on, over, and across the land described in Tract No. B101E-3 (the "Premises") for the location, construction, maintenance, repair, operation, patrol, and replacement of a flood protection levee, including all appurtenances thereto; as currently authorized by Congress under the Flood Control Acts of 1936 and 1938 as described in those contract drawings and specifications in Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017, as amended, ("the Project")
as those plans may be modified pursuant to the terms of any agreements between the parties, provided any final interpretation of those contract drawings and specifications in Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017, as amended, and decisions regarding modification once construction commences or for post construction modification shall, subject to the terms of any other agreements between the parties, be vested in the GRANTEEE, provided further any such agreements shall not impair or otherwise terminate the rights granted herein which do not include any rights to develop the hydroelectric power potential at the Premises and the Project; reserving to the GRANTOR, its successors and assigns, all remaining rights and privileges including, without limitation the right to divert and of beneficial use of water as provided and at the location identified in State of Washington Water Right Permit No. S2-29920(A) - (B) (priority date June 20, 2000) and Certificate of Change of Water Right No. S2-CV1- 2P168(B) (priority date April 17, 1895) (“GRANTOR’S Water Rights”) and the right to access, operate, use, patrol, maintain, repair, upgrade, restore, reconstruct and replace GRANTOR’S headworks and associated facilities located within or adjacent to the Premises.

In exercising its rights under this Easement, GRANTEEE shall comply with all applicable laws and regulations now or hereafter enacted pertaining to the Project. Further, GRANTEEE is responsible for meeting all applicable federal, state and local safety and other codes, and for obtaining all applicable federal, state and local permits, licenses, or other authorizations required for the construction and operation of the Project including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare to the extent Congress has waived sovereign immunity. Nothing in this Easement shall be interpreted as a waiver of sovereign immunity by the United States.

GRANTOR does not assume any liability for injury or damage to any person or property incident to or that may arise during and in consequence of the GRANTEEE’s or its assignees use, occupancy and enjoyment of the Premises or their construction of, erection of, maintenance of, or their failure to properly and safely construct, operate and maintain the Project or to use and occupy said Premises.

GRANTEEE shall construct, operate and maintain the Project, consistent with the purposes of the Project, in a safe, careful, and workmanlike manner so as to avoid damage to the GRANTOR’S headworks or interference with the GRANTOR’S operations and to prevent injury to property of the GRANTOR and to the life and property of third persons. GRANTEEE agrees, to the extent permitted by federal law, to indemnify and hold harmless GRANTOR, its members, and its elected or appointed officers, officials, and employees from any damage caused by GRANTEEE, its employees and/or contractors on the Premises, in the exercise of rights under this Easement, provided, no obligation or payment by GRANTEEE may exceed the amount of funds authorized and available for such purpose at the time of the damage.

This conveyance is a Bargain and Sale Deed pursuant to RCW 64.04.040 and accordingly, GRANTOR by these presents expressly limits the covenants of this Easement to those herein expressed and excludes all covenants arising or to arise by statutory or other
implication and does hereby covenant that against all persons whomsoever lawfully claiming or
to claim by, through or under said GRANTOR and not otherwise, GRANTOR will forever
warrant and defend the said described real property.

GRANTEE shall have the right to assign, apportion or otherwise transfer any or all of its
rights, benefits, privileges and interests arising in and under this Easement to an entity authorized
by Congress to own or operate the Project on behalf of or in place of GRANTEE and such entity
owns the Project or is otherwise contractually obligated to GRANTEE to operate the Project (a
"Permitted Assignment"). Except for a Permitted Assignment, all other assignments,
apportionments or transfers shall require GRANTOR's prior written consent, such consent not to
be unreasonably withheld, conditioned or delayed. Subject to and without limiting the generality
of the foregoing, the rights and obligations of the parties shall inure to the benefit of and be
binding upon their respective successors and assigns.

In any litigation or other proceeding arising out of this Easement, the substantially
prevailing party shall be entitled to an award of its' reasonable attorneys' fees and other costs
incurred therein to the extent permitted by federal law.

Invalidation of any of the provisions contained in this Easement, or of the application
thereof to any person, by judgment or court order, shall in no way affect any of the other
provisions thereof or the application thereof to any other person and the same shall remain in full
force and effect.

The failure of any party to insist upon strict performance of any of the terms, covenants
or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may
have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or
default in any of such terms, covenants or conditions.

In the event the Project is deauthorized by Congress, this Easement shall terminate and
subject to any conditions or restrictions imposed by Congress and compliance with applicable
environmental laws, the GRANTEE shall have the right to remove the improvements or abandon
them in place without payment of further compensation to the GRANTOR. Nothing in this
Easement shall be interpreted to require obligations or payments by the GRANTEE in violation
of the Anti-Deficiency Act, 31 U.S.C. §1341 or shall imply that the Congress will at a later date
authorize and appropriate funds to meet deficiencies.

GRANTOR alone shall pay any and all taxes, charges or use fee(s) levied by any
governmental agency against GRANTEE's interest in the Premises, or against any of
GRANTOR's real property as a result of the Easement herein granted. GRANTEE shall not
cause liens of any kind to be placed against the Premises or any of GRANTOR's other real
property.

GRANTEE's obligation to pay or reimburse any money under this Easement is subject to
express Congressional authorization and the availability of fund appropriated for this purpose to
the Department of the Army, and nothing in this Easement shall be interpreted to require
obligations or payments by the GRANTEE in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. The provisions of this clause are without prejudice to any rights GRANTOR may have to make a claim under applicable laws for any other damages than provided herein. Nothing in this Easement may be considered as implying that the Congress will at a later date authorize and appropriate funds to meet deficiencies.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this _____ day of ________________, 2018.

GRANTOR: CASCADE WATER ALLIANCE

By: ________________________________
Title: ______________________________

GRANTEE: THE UNITED STATES OF AMERICA

_______________________________
U.S. Army Corps of Engineers
Todd L. Czarnecki
Chief, Real Estate
Real Estate Contracting Officer
Northwestern Division
STATE OF WASHINGTON

County of King

On this ___ day of __________________, 2018, before me the undersigned, a Notary Public for the State of Washington, duly commissioned and sworn, personally appeared __________________, to me known to be the Chief Executive Officer, who executed the foregoing instrument and acknowledged to me that he was authorized to execute said instrument on behalf of the Cascade Water Alliance for the uses and purposes mentioned therein.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature of Notary]

[Print Name of Notary]
Notary Public in and for the State of Washington
Residing at: ____________________________
My Commission expires: __________________

STATE OF OREGON

County of Multnomah

On this ___ day of __________________, 2018, before me the undersigned, a Notary Public for the State of Oregon, personally appeared Todd L. Czarnecki and known to me to be the persons whose names are subscribed to the within and foregoing instrument and being first duly sworn, acknowledged to me that they executed the same as their free and voluntary act for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

______________________________
Notary Public for the State of Oregon
Residing at: ____________________________
My Commission expires: __________________
LEGAL DESCRIPTION

A parcel of land situated in the SW1/4, SE1/4, Section 35, Township 20 North, Range 6 East, and the NW1/4, NE1/4 Section 2 Township 19 North, Range 6 East, W.M. in King County, Washington, more particularly described as follows:

Commencing at the Southwest corner of Lot 3 BLA #L09L0007 recorded in King County, thence, south 85°01'55" east, a distance of 1,342.62 feet to intersection of the south boundary line of said Lot 3 and the West line of the SE1/4, SE1/4 of said Section 35, being the true Point of Beginning;

Thence south 00°44'42" west, along said west line of the SE1/4, SE1/4 of Section 35, a distance of 105.13 feet more or less;

Thence south 61°23'11" west, a distance of 465.20 feet more or less;
Thence south 44°05'33" west, a distance of 65.49 feet more or less;
Thence south 23°53'40" west, a distance of 235.11 feet more or less, to the south boundary line of King County Assessor's parcel # 0219069003;

Thence westerly, along the said south boundary line, a distance of 119.79 feet more or less, to the west boundary line of said parcel;

Thence north 01°57'39" west, along the west boundary line of said parcel, a distance of 257.41 feet more or less, to the south boundary line of said Lot 3;

Thence Northeasterly, along said south line of Lot 3, to the true Point of Beginning.

Containing 2.69 acres, more or less.

This legal description is not based on an actual survey.

Coordinates and basis of bearing are based on the Washington State Plane Coordinate System, North Zone, NAD 27, US feet.

By: OJV July 7 2017
Chkd: JEF July 7 2017
Map: CWA_B101E_3.mxd
CAD/GIS: \\Mud Mountain Dam\Tasks\MMDFP 2015\CWA-legals
Doc: 002481.docx
Grantor: CASCADE WATER ALLIANCE

Grantee: UNITED STATES OF AMERICA

Abbreviated Legal Description: Portions of: Section 34, Township 20 North, Range 6 East, and Section 2, Township 19 North, Range 6 East, W.M. in Pierce County, Washington

Tax Parcel #: PTNS 0619022001, 0620344012, 0620344014

TEMPORARY EASEMENT DEED

The GRANTOR, the Cascade Water Alliance, a Washington municipal corporation, for value received the receipt of sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the United States of America an easement and right-of-way for the uses and purposes set forth hereinafter in connection with the Mud Mountain Dam Fish Passage Project, in, upon, over and across the following described parcel of land situate, lying and being in the Counties of King and Pierce, State of Washington (the “Easement”):

THE LEGAL DESCRIPTION IS ATTACHED AS EXHIBIT A

This Conveyance is for the Department of the Army.

The Easement and rights hereby granted include the right, power, privilege and easement in, on, over and across the above described property for the following purposes:

A temporary easement and right-of-way in, on, over, and across Tracts No. B101D-7 (the “Premises”), for a period not to exceed 5 years, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors for the location, construction, operation, maintenance, alteration, and replacement of roads and appurtenances thereto and as a work area including the right to move, store, and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Mud Mountain Dam Fish
Passage Project, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the GRANTOR, its successors and assigns, the right to access, operate, use, patrol, maintain, repair, upgrade, reconstruct and replace GRANTOR’s facilities located within or adjacent to the Premises; together with all other such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired to include; subject however, to existing easements for public roads and highways, public utilities, railroads, and pipelines.

Upon expiration of this easement and subject to improvements constructed pursuant to the design requirements for the Project identified above, the premises will be restored to substantially the same condition as that which existed at the time possession was granted to the United States unless otherwise agreed by the parties.

In exercising its rights under this Easement, GRANTEE shall comply with all applicable laws and regulations now or hereafter enacted pertaining to the Project. Further, GRANTEE is responsible for meeting all applicable federal, state and local safety and other codes, and for obtaining all applicable federal, state and local permits, licenses, or other authorizations required for the construction and operation of the Project including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare to the extent Congress has waived sovereign immunity. Nothing in this Easement shall be interpreted as a waiver of sovereign immunity by the United States.

GRANTOR does not assume any liability for injury or damage to any person or property incident to or that may arise during and in consequence of the GRANTEE’s or its assignees use, occupancy and enjoyment of the Premises or their construction of, erection of, maintenance of, or their failure to properly and safely construct, operate and maintain the Project or to use and occupy said Premises.

GRANTEE shall, consistent with the purposes of the Project, construct the Project in a safe, careful, and workmanlike manner so as to avoid damage to the GRANTOR’S facilities or interference with the GRANTOR’S operations and to prevent injury to property of the GRANTOR and to the life and property of third persons. GRANTEE agrees, to the extent permitted by federal law, to indemnify and hold harmless GRANTOR, its members, and its elected or appointed officers, officials, and employees from any damage caused by GRANTEE, its employees and/or contractors on the Premises, in the exercise of rights under this Easement, provided, no obligation or payment by GRANTEE may exceed the amount of funds authorized and available for such purpose at the time of the damage.

In any litigation or other proceeding arising out of this Easement, the substantially prevailing party shall be entitled to an award of its’ reasonable attorneys’ fees and other costs incurred therein to the extent permitted by federal law.

Invalidation of any of the provisions contained in this Easement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other
provisions thereof or the application thereof to any other person and the same shall remain in full
force and effect.

The failure of any party to insist upon strict performance of any of the terms, covenants
or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may
have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or
default in any of such terms, covenants or conditions.

GRANTOR alone shall pay any and all taxes, charges or use fee(s) levied by any
governmental agency against GRANTEE’s interest in the Premises, or against any of
GRANTOR’s real property as a result of the Easement herein granted. GRANTEE shall not
cause liens of any kind to be placed against the Premises or any of GRANTOR’s other real
property.

GRANTEE’s obligation to pay or reimburse any money under this Easement is subject to
express Congressional authorization and the availability of fund appropriated for this purpose to
the Department of the Army, and nothing in this Easement shall be interpreted to require
obligations or payments by the GRANTEE in violation of the Anti-Deficiency Act, 31 U.S.C.
§1341. The provisions of this clause are without prejudice to any rights GRANTOR may have to
make a claim under applicable laws for any other damages than provided herein. Nothing in this
Easement may be considered as implying that the Congress will at a later date authorize and
appropriate funds to meet deficiencies.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this
____ day of __________________, 2018.

GRANTOR: CASCADE WATER ALLIANCE

By: __________________________
Title: _________________________

GRANTEE: THE UNITED STATES OF AMERICA

______________________________
U.S. Army Corps of Engineers
Todd L. Czarnecki
Chief, Real Estate
Real Estate Contracting Officer
Northwestern Division
STATE OF WASHINGTON

County of King

On this ___ day of _____________, 2018, before me the undersigned, a Notary Public for the State of Washington, duly commissioned and sworn, personally appeared _______________, to me known to be the Chief Executive Officer, who executed the foregoing instrument and acknowledged to me that he was authorized to execute said instrument on behalf of the Cascade Water Alliance for the uses and purposes mentioned therein.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature of Notary]

[Print Name of Notary]
Notary Public in and for the State of Washington
Residing at: _______________________
My Commission expires: ________________

STATE OF OREGON

County of Multnomah

On this ___ day of _____________, 2018, before me the undersigned, a Notary Public for the State of Oregon, personally appeared Todd L. Czarnecki and known to me to be the persons whose names are subscribed to the within and foregoing instrument and being first duly sworn, acknowledged to me that they executed the same as their free and voluntary act for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

Notary Public for the State of Oregon
Residing at: _______________________
My Commission expires: ________________
LEGAL DESCRIPTION

5 parcels of land situated in Section 34, Township 20 North, Range 6 East, and Section 2, Township 19 North, Range 6 East, W.M. in Pierce County, Washington, more particularly described as follows:

Parcel A:

**Beginning** at the Northeast corner of Pierce County Assessor’s parcel # 0619022001;
Thence south 03°39'08" east, along the east line of said parcel, a distance of 34.99 feet more or less;
Thence north 78°24'09" west, a distance of 184.32 feet more or less, to the north line of said parcel;
Thence south 89°18'47" east, along the north line of said parcel, a distance of 178.34 feet more or less, to the **Point of Beginning**;

Parcel B:

**Commencing** at the Northeast corner of Pierce County Assessor’s parcel # 0619022001, thence south 03°39'08" east, a distance of 84.43 feet more or less, to the true **Point of Beginning**;
Thence south 03°39'08" east, along the east line of said parcel, a distance of 81.31 feet more or less;
Thence north 73°12'51" west, a distance of 404.30 feet more or less;
Thence north 78°22'08" west, a distance of 279.94 feet more or less, to the north line of said parcel;
Thence south 89°18'47" east, along the north line of said parcel, a distance of 334.65 feet more or less;
Thence south 72°46'03" east, a distance of 248.96 feet more or less;
Thence south 63°47'25" east, a distance of 62.13 feet more or less;
Thence north 64°47'24" east, a distance of 30.87 feet more or less, to the **Point of Beginning**;

By: OJV July 10 2017 (rev. 30 Aug 2017)
Chkd: JEF July 19 2017
Map: CWA_B101E_7.mxd
CAD/GIS: \\ Mud Mountain Dam\Tasks\MMDFP 2015\CWA-legals
Doc: 002483.docx
Parcel C:

Commencing at the Northeast corner of Pierce County Assessor’s parcel # 0620344012, thence south 01°00'37" west, a distance of 269.94 feet more or less, to the true Point of Beginning:

Thence south 01°00'37" west, along the east line of said parcel, a distance of 71.36 feet more or less;
Thence north 75°21'47" west, a distance of 1,039.52 feet more or less, to the west line of said parcel;
Thence north 20°42'41" east, along the west line of said parcel, a distance of 61.77 feet more or less;
Thence south 68°38'00" east, a distance of 75.43 feet more or less;
Thence south 75°09'35" east, a distance of 374.01 feet more or less;
Thence south 81°04'21" east, a distance of 179.59 feet more or less;
Thence south 73°23'33" east, a distance of 199.97 feet more or less;
Thence north 88°33'17" east, a distance of 101.94 feet more or less;
Thence south 25°56'31" east, a distance of 30.02 feet more or less;
Thence south 76°42'23" east, a distance of 71.24 feet more or less, to the Point of Beginning;

Parcel D:

Commencing at the Northeast corner of Pierce County Assessor’s parcel # 0620344012, thence south 01°00'37" west, a distance of 359.82 feet more or less, to the true Point of Beginning:

Thence south 01°00'37" west, along the east line of said parcel, a distance of 70.42 feet more or less;
Thence north 67°42'34" west, a distance of 70.95 feet more or less;
Thence north 73°57'51" west, a distance of 237.69 feet more or less;
Thence north 77°48'15" west, a distance of 193.26 feet more or less;
Thence north 77°27'51" west, a distance of 509.43 feet more or less;
Thence south 88°10'57" west, a distance of 65.46 feet more or less, to the west line of said parcel;
Thence north 20°42'37" east, along the west line of said parcel, a distance of 56.99 feet more or less;

By: OJV July 10 2017 (rev. 30 Aug 2017)
Chkd: JEF July 19 2017
Map: CWA_B101E_7.mxd
CAD/GIS: \Mud Mountain Dam\Tasks\MMDFP 2015\CWA-legals
Doc: 002483.docx
Thence south 88°47’53" east, a distance of 50.08 feet more or less;  
Thence south 77°05’52" east, a distance of 497.33 feet more or less;  
Thence south 80°08’06" east, a distance of 71.45 feet more or less;  
Thence south 76°35’50" east, a distance of 433.35 feet more or less, to the **Point of Beginning**;

Parcel E:

**Commencing** at the Southwest corner of Pierce County Assessor’s parcel # 0620344014, thence north 14°39’11" east, a distance of 189.26, to the true **Point of Beginning**;

Thence north 88°55’20" east, a distance of 176.24 feet more or less;  
Thence north 75°42’06" east, a distance of 192.43 feet more or less;  
Thence south 88°53’29" east, a distance of 83.04 feet more or less;  
Thence south 78°51’30" east, a distance of 129.14 feet more or less;  
Thence south 86°40’25" east, a distance of 16.71 feet more or less, to the west line of said parcel;  
Thence north 20°25’04" east, a distance of 52.40 feet more or less;  
Thence north 80°17’55" west, a distance of 158.58 feet more or less;  
Thence north 88°53’29" west, a distance of 92.07 feet more or less;  
Thence south 75°53’23" west, a distance of 196.38 feet more or less;  
Thence south 88°11’02" west, a distance of 138.87 feet more or less, to the west line of said parcel;  
Thence southwesterly, along the west boundary of said parcel, also being the east ROW line of highway 410, to the **Point of Beginning**;

**Containing 4.17 acres, more or less.**

This legal description is not based on an actual survey.

Coordinates and basis of bearing are based on the Washington State Plane Coordinate System, North Zone, NAD 27, US feet.
Grantor: CASCADE WATER ALLIANCE

Grantee: UNITED STATES OF AMERICA

Abbreviated Legal Description: Portion of Section 2, T 19 N, R 6 EWM, Pierce County, Washington

Tax Parcel #: 0619021006

TEMPORARY EASEMENT DEED

The GRANTOR, the Cascade Water Alliance, a Washington municipal corporation, for value received the receipt of sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the United States of America an easement and right-of-way for the uses and purposes set forth hereinafter in connection with the Mud Mountain Dam Fish Passage Project, in, upon, over and across the following described parcel of land situate, lying and being in the Counties of King and Pierce, State of Washington (the "Easement"):

THE LEGAL DESCRIPTION IS ATTACHED AS EXHIBIT A

This Conveyance is for the Department of the Army.

A temporary easement and right-of-way in, on, over, and across Tract No. B101E-8 (the "Premises"), for a period not to exceed 7 years, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area including the right to move, store, and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Mud Mountain Dam Fish Passage Project, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the GRANTOR, its successors and assigns, the right to access, operate, use, patrol, maintain, repair, upgrade, reconstruct and replace GRANTOR's facilities located within or adjacent to the Premises; together with all other such rights and privileges as may be used without interfering
with or abridging the rights and easement hereby acquired to include; subject however, to existing
 easements for public roads and highways, public utilities, railroads, and pipelines.

Upon expiration of this easement and subject to improvements constructed pursuant to
the design requirements for the Project identified above, the premises will be restored to
substantially the same condition as that which existed at the time possession was granted to the
United States unless otherwise agreed by the parties.

In exercising its rights under this Easement, GRANTEE shall comply with all applicable
laws and regulations now or hereafter enacted pertaining to the Project. Further, GRANTEE is
responsible for meeting all applicable federal, state and local safety and other codes, and for
obtaining all applicable federal, state and local permits, licenses, or other authorizations required
for the construction and operation of the Project including, but not limited to, such laws or
permits as may pertain to building, zoning, shoreline regulation, environmental protection or
other matters pertaining to the general public health, safety and welfare to the extent Congress
has waived sovereign immunity. Nothing in this Easement shall be interpreted as a waiver of
sovereign immunity by the United States.

GRANTOR does not assume any liability for injury or damage to any person or property
incident to or that may arise during and in consequence of the GRANTEE’s or its assignees use,
occupancy and enjoyment of the Premises or their construction of, erection of, maintenance of,
or their failure to properly and safely construct, operate and maintain the Project or to use and
occupy said Premises.

GRANTEE shall, consistent with the purposes of the Project, construct the Project in a
safe, careful, and workmanlike manner so as to avoid damage to the GRANTOR’S facilities or
interference with the GRANTOR’S operations and to prevent injury to property of the
GRANTOR and to the life and property of third persons. GRANTEE agrees, to the extent
permitted by federal law, to indemnify and hold harmless GRANTOR, its members, and its
elected or appointed officers, officials, and employees from any damage caused by GRANTEE,
its employees and/or contractors on the Premises, in the exercise of rights under this Easement,
provided, no obligation or payment by GRANTEE may exceed the amount of funds authorized
and available for such purpose at the time of the damage.

In any litigation or other proceeding arising out of this Easement, the substantially
prevailing party shall be entitled to an award of its’ reasonable attorneys’ fees and other costs
incurred therein to the extent permitted by federal law.

Invalidation of any of the provisions contained in this Easement, or of the application
thereof to any person, by judgment or court order, shall in no way affect any of the other
provisions thereof or the application thereof to any other person and the same shall remain in full
force and effect.

The failure of any party to insist upon strict performance of any of the terms, covenants
or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may
have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

GRANTOR alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against GRANTEE’s interest in the Premises, or against any of GRANTOR’s real property as a result of the Easement herein granted. GRANTEE shall not cause liens of any kind to be placed against the Premises or any of GRANTOR’s other real property.

GRANTEE’s obligation to pay or reimburse any money under this Easement is subject to express Congressional authorization and the availability of fund appropriated for this purpose to the Department of the Army, and nothing in this Easement shall be interpreted to require obligations or payments by the GRANTEE in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. The provisions of this clause are without prejudice to any rights GRANTOR may have to make a claim under applicable laws for any other damages than provided herein. Nothing in this Easement may be considered as implying that the Congress will at a later date authorize and appropriate funds to meet deficiencies.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this _____ day of __________________, 2018.

GRANTOR: CASCADE WATER ALLIANCE

By: ____________________________
Title: ____________________________

GRANTEE: THE UNITED STATES OF AMERICA

______________________________
U.S. Army Corps of Engineers
Todd L. Czarnecki
Chief, Real Estate
Real Estate Contracting Officer
Northwestern Division
STATE OF WASHINGTON  
County of King  

On this ___ day of ________________, 2018, before me the undersigned, a Notary Public for the State of Washington, duly commissioned and sworn, personally appeared ____________________, to me known to be the Chief Executive Officer, who executed the foregoing instrument and acknowledged to me that he was authorized to execute said instrument on behalf of the Cascade Water Alliance for the uses and purposes mentioned therein.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature of Notary]
[Print Name of Notary]
Notary Public in and for the State of Washington
Residing at: _______________________
My Commission expires: _______________

STATE OF OREGON  
County of Multnomah  

On this ___ day of ________________, 2018, before me the undersigned, a Notary Public for the State of Oregon, personally appeared Todd L. Czarnecki and known to me to be the persons whose names are subscribed to the within and foregoing instrument and being first duly sworn, acknowledged to me that they executed the same as their free and voluntary act for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

Notary Public for the State of Oregon
Residing at: _______________________
My Commission expires: _______________
LEGAL DESCRIPTION

A parcel of land situated in Section 2, Township 19 North, Range 6 East, W.M. in Pierce County, Washington, more particularly described as follows:

That portion of Pierce County Assessor's parcel # 0619021006 more particularly described as:

Commencing at the Northwest corner of Pierce County Assessor's parcel # 0619021006, thence south 01°26'24" east, a distance of 12.26 feet more or less, to the true Point of Beginning;

Thence south 57°55'06" east, a distance of 188.04 feet more or less;
Thence south 64°24'01" east, a distance of 118.45 feet more or less;
Thence south 27°28'09" west, a distance of 24.00 feet more or less;
Thence south 71°59'56" east, a distance of 84.84 feet more or less;
Thence north 38°00'48" east, a distance of 24.39 feet more or less;
Thence south 84°21'06" east, a distance of 62.90 feet more or less;
Thence south 25°36'30" east, a distance of 78.83 feet more or less;
Thence south 76°37'37" east, a distance of 135.25 feet more or less;
Thence south 58°48'02" east, a distance of 183.79 feet more or less;
Thence south 47°18'48" west, a distance of 107.65 feet more or less;
Thence south 68°35'03" west, a distance of 86.64 feet more or less, to the south boundary of said parcel;
Thence north 74°12'13" west, along said south boundary, a distance of 590.53 feet more or less, to the west boundary of said parcel;
Thence north 01°26'24" west, along said west boundary, a distance of 327.09 feet more or less, to the Point of Beginning;

Containing 3.66 acres, more or less.

This legal description is not based on an actual survey.

Coordinates and basis of bearing are based on the Washington State Plane Coordinate System, North Zone, NAD 27, US feet.

By: OJV July 10 2017(rev 30 Aug 2017)
Chkd: JEF July 19 2017
Map: CWA_B101E_8.mxd
CAD/GIS: \Mud Mountain Dam\Tasks\MMDFP 2015\CWA-legals
Doc: 002485.docx
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CASCADE WATER ALLIANCE
FOR ADDITIONAL WORK
IN CONNECTION WITH CONSTRUCTION OF
MUD MOUNTAIN DAM FISH PASSAGE PROJECT

This AGREEMENT (hereinafter the “Agreement”) is entered into this ______ day
of ____________, ________, by and between the Department of the Army (hereinafter
the “Government”), represented by the U.S. Army Engineer, Seattle District (hereinafter the
“District Engineer”), and the Cascade Water Alliance, a Washington municipal corporation,
(hereinafter the “Non-Federal Interest”), represented by the Chief Executive Officer.

WITNESSETH, THAT:

WHEREAS, the Mud Mountain Dam Fish Passage Project (hereinafter the “Project,”
as defined in Paragraph 1.a. of this Agreement) was authorized for construction by Section 5
of the Flood Control Act of 1936, Public Law 74-738 and has been granted Continuing
Contract Approval authorization for its construction;

WHEREAS, the Cascade Water Alliance is a non-Federal interest within the meaning
of section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962-5b);

WHEREAS, the Non-Federal Interest requests construction of modifications and
improvements to its diversion facility at Buckley, WA, (hereinafter the “Additional Work,” as
defined by Paragraph 1.c. of this Agreement) which are in addition to the modifications to the
diversion facility needed due to the construction of the Project itself, and agrees pursuant to
Revised Code of Washington Section 39.32.070, to pay all costs of such Additional Work;
and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the
Additional Work, at the Non-Federal Interest’s full expense, in connection with construction
of the Project.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. Definitions:

a. The term “Project” means a fish barrier and fish passage facility, as generally
described in the FY 2015 Design and Execution Document, Mud Mountain Dam Upstream
Fish Passage Project, Flood Control Act of June 22, 1936, Pierce County WA, dated April 24,
2015 and approved by the Director of Civil Works on May 11, 2015 (hereinafter the
"Decision Document").

b. The term “Construction Plans” means the contract specifications and drawings in
Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017, as
may be amended, prior to contract award or modified at and after award.

c. The term “Additional Work” means items 6, 8, and 20-30 of the MMD FPF CLIN
0008 Pricing Breakdown Structure as described in Amendment 0002, dated October 19, 2017
to Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017.

d. The term “fiscal year” means one year beginning on October 1st and ending on
September 30th of the following year.

2. In accordance with Federal laws, regulations, and policies, the Government shall undertake
and complete construction of the Project according to the Construction Plans using funds
appropriated by the Congress and shall undertake construction of the Additional Work with
funds provided by the Non-Federal Interest according to the Construction Plans.

3. To the greatest extent practicable and in accordance with Federal law, regulations, and
policies, the Government shall minimize impacts on the Non-Federal Interest’s operations and
facilities during construction of the Project and Additional Work. The Government shall
include in any contracts for construction of the Project and Additional Work the clause at
Federal Acquisition Regulation 52.236-9, 48 C.F.R. § 52.236-9.

4. The Government shall include in any contracts for construction of the Project and
Additional Work provisions for the contractor to enter into a separate agreement with the
Non-Federal Interest to defend, indemnify and hold harmless the Non-Federal Interest, its
board of directors, officers, managers, employees, engineers, agents, and volunteers from and
against all demands, claims, losses, injuries, damages, liabilities, suits, judgment, attorneys’
fees and costs, and other expenses of any kind (including any suits or claims made by or for
the benefit of contractor’s employees or their survivors) on account of, relating to, or arising
out of contractor’s work under the contract for construction of the Project, except to the extent
such injuries or damages are caused by the sole negligence of the Non-Federal Interest, and to
name the Non-Federal Interest as an additional insured. These provisions will be included as
optional items in the solicitation for the Project and the Government shall exercise these
options upon receipt of funds from the Non-Federal Interest required for these optional items.

5. To the extent practicable and in accordance with Federal law, regulations, and policies, the
Government shall afford the Non-Federal Interest the opportunity to review and comment on
solicitations for contracts, including relevant plans and specifications, prior to the
Government’s issuance of such solicitations; proposed contract modifications, including
change orders; and contract claims prior to resolution thereof. The contents of solicitations,
award of contracts, execution of contract modifications, acceptance of work and resolution of
contract claims shall be exclusively within the control of the Government. Notwithstanding
the foregoing, the Government will follow the requirements of Paragraph 12, to the extent applicable, in addressing these matters.

6. When the District Engineer determines in accordance with the provisions of Paragraph 12 that the Additional Work is complete, the District Engineer shall so notify the Non-Federal Interest in writing. The Government shall furnish the Non-Federal Interest with copies of all as-built drawings for the Additional Work.

7. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, associated with the Additional Work to be carried out in connection with construction of the Project. While the Government will endeavor to limit the additional costs associated with the Additional Work to the current Government estimate, the Non-Federal Interest acknowledges that the actual costs for the Additional Work may exceed estimated amounts due to modifications, delays, claims or other unforeseen circumstances and that subject to the provisions of Paragraph 12, the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Work.

8. The Non-Federal Interest shall provide to the Government funds to pay all costs for the contractor’s indemnification of the Non-Federal Interest and naming the Non-Federal Interest as an additional insured unless the insurance and indemnification requirement is waived by the Non-Federal Interest under Paragraph 9 below.

9. Payment of Funds:

   a. As soon as possible, but no later than the day of award of the construction contract, the Government shall inform the Non-Federal Interest in writing of the cost for the contractor’s indemnification of the Non-Federal Interest and naming the Non-Federal Interest as an additional insured. Within 30 calendar days of this notification, the Non-Federal Interest will either provide to the Government the full amount of funds for the contractor’s indemnification of the Non-Federal Interest and naming the Non-Federal Interest as an additional insured, or shall provide written notification that it is waiving the requirement for the contractor to indemnify the Non-Federal Interest and to name the Non-Federal Interest as an additional insured.

   b. No later than August 1st prior to the fiscal year when construction of the Additional Work will begin, the Government shall provide the Non-Federal Interest with a written estimate of the full amount of funds required from the Non-Federal Interest during that fiscal year. Not later than September 1st prior to that fiscal year, the Non-Federal Interest shall provide the full amount of such required funds to the Government.

   c. The Non-Federal Interest shall provide the funds required to meet its share of construction costs by delivering a check payable to “FAO, USAED, Seattle G3” to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Interest has deposited such required funds in an escrow or other account acceptable to the
Government, with interest accruing to the Non-Federal Interest, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

d. The Government shall draw from the funds provided by the Non-Federal Interest to cover the costs of construction of the Additional Work as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Interest to cover the costs of construction of the Additional Work, the Government shall provide the Non-Federal Interest with written notice of the amount of additional funds required with reasonable supporting documentation of justification for the additional funds. Within 60 calendar days from receipt of such notice and documentation, the Non-Federal Interest shall provide the Government with the full amount of such additional required funds. The Government will draw upon funds in accordance with Engineer Regulation No. 1165-2-30, dated December 31, 1997 with Change 1, October 30, 1998.

e. Upon completion of the Additional Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest’s responsibility to pay for all costs associated with the Additional Work, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within sixty (60) calendar days of such written notice by delivering a check payable to “FAO, USAED Seattle G3” to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within sixty (60) calendar days of such written notice, subject to the availability of funds.

f. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Interest to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Interest, provide to the Non-Federal Interest or independent auditors any such information necessary to enable an audit of the Non-Federal Interest’s activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Interest without reimbursement or credit by the Government.

10. The Government shall not commence the Additional Work until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and b) the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements, and rights-of-way the Government determines to be required for construction of the Project, to include the Additional Work.
11. The Government shall provide the Non-Federal Interest with quarterly reports of estimated obligations for the Additional Work; costs incurred by the Government, using both Federal and Non-Federal Interest funds, to date; and the amount of funds provided by the Non-Federal Interest to date. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following execution of this Agreement. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Work.

12. Construction Management:

   a. While the Project and Additional Work are under construction, the Non-Federal Interest shall participate in management of the construction of the Project and Additional work through attendance at weekly construction meetings with the Government and the construction contractor and through review and response to information and documents. The Non-Federal Interest may attend weekly construction meetings in person or telephonically. The Government will provide the Non-Federal Interest with notes from the weekly construction meeting. The information and documents which the Government shall provide to the Non-Federal Interest will be identified as For Information Only (FIO), Comment (C), or Approval (A).

   b. Submittal Review Process: After the Government awards any contract for construction of the Project and the Additional Work, the Non-Federal Interest shall submit a list of the submittals from the construction contractor which the Non-Federal Interest wants to review, to include submittals related to the work described in Drawing Set 7 and Set 9 of the Construction Plans. The Government, in cooperation with the Non-Federal Interest, will establish a submittal register with the construction contractor. When the Government receives a submittal from the construction contractor it will forward it electronically to the Non-Federal Interest. For Comment and Approval submittals, the Non-Federal Interest shall then respond to the Government with its response to the submittal. The Government will establish reasonable deadlines for submittal responses from the Non-Federal Interest.

   c. Requests for Information: For requests for information from the construction contractor about features of the Project or the Additional Work which were designed by the Non-Federal Interest, the Government will provide the request for information to the Non-Federal Interest for a response. When providing the request for information to the Non-Federal Interest, the Government may establish a reasonable deadline for the response to prevent delay of the construction contractor.

   d. Changes & Modifications: The Government will provide to the Non-Federal Interest any proposed contract change orders or modifications to work described in Drawing Set 7 and Set 9 of the Construction Plans and any other modifications to the Construction Plans that would materially affect the plans, specifications or costs of work described in Drawing Set 7 and Set 9. For proposed change orders or modifications to the work described in Drawing Set 7 and Set 9, the Government will provide the change order or modification to
the Non-Federal Interest for approval. For any other change orders described above, the Government will provide the change order or modification to the Non-Federal Interest for review and comment which the Government will try to accommodate in its decision to the extent reasonably practicable. For change orders and modifications approved by the Non-Federal Interest that increase the cost of the Additional Work, the Government will request additional funds in accordance with Paragraph 9.d.

e. In-Progress Field Inspections and Testing: The Government will provide to the Non-Federal Interest any documentation and test results for the work described in Drawing Set 7 and Set 9. The Government will not accept work where field inspections or testing indicate non-compliance with contract drawings or specifications for the work described in Drawing Set 7 and Set 9 without the concurrence of the Non-Federal Interest.

f. Final Inspection & Acceptance: The Non-Federal Interest will join the Government in its inspection the Additional Work for final acceptance from the construction contractor. Following the inspection, the Non-Federal Interest shall provide the Government a list of deficiencies to be corrected by the construction contractor. The Government will provide the list of deficiencies to the construction contractor. When the contractor has notified the Government that it has corrected any deficiencies, the Government will provide the Non-Federal Interest the opportunity to review corrections and provide comments prior to final acceptance.

g. Warranty Period: The Non-Federal Interest will review and comment on the contractor’s Warranty Management Plan as a submittal in accordance with Paragraph 12.b. The Government will maintain the warranty for one year after the acceptance described in 12.f. per the contractor’s Warranty Management Plan.

13. Dispute Resolution Process: If the Government and the Non-Federal Interest disagree on any submittal, request for information, change order, modification, or other matter of execution of this agreement, the issue will be elevated to the Government’s Project Manager for the Mud Mountain Dam Fish Passage Project and to the Cascade Water Alliance Director of Planning. If resolution cannot be reached at that level, the issue will be elevated to the District Engineer and Cascade Water Alliance Chief Executive Officer. The parties will work to address the issues as expeditiously as possible under the circumstances.

14. As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.
15. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

16. In the exercise of their respective rights and obligations under this Agreement the Government and the Non-Federal Interest agree to comply with all applicable laws and regulations.

17. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

Cascade Water Alliance
Attention: Michael Gagliardo, Director of Planning
520 112th Ave NE
Suite 400
Bellevue, WA 98004

If to the Government:

U.S. Army Corps of Engineers Seattle District
Attention: Leah Hauenstein, MMD Project Manager
4735 East Marginal Way South
Seattle, WA 98134

A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

18. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

19. This Agreement may be modified or amended only by written, mutual agreement of the parties.

20. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

21. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party
may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

22. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States. The provisions of this clause are without prejudice to any rights the Non-Federal Interest may have to make a claim under applicable laws for any other damages that provided herein.

23. The Non-Federal Interest shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation and replacement of the Additional Work, except for damages due to the fault or negligence of the Government or its contractors.

24. Termination:

   a. If at any time the Non-Federal Interest fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Additional Work.

   b. If the Government determines at any time in accordance with the provisions of Paragraph 12 that the Federal funds made available for construction of the Additional Work are not sufficient to complete such work, the Government shall so notify the Non-Federal Interest in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds provided by the Non-Federal Interest to allow construction to resume.

   c. In the event of termination, the parties shall conclude their activities relating to construction of the Additional Work. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

   d. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Interest pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.
IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: ______________________
Mark A. Geraldi
Colonel, U.S. Army

DATE: _____________________

CASCADE WATER ALLIANCE

BY: ______________________
Chuck Clarke
Chief Executive Officer

DATE: _____________________
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CASCADE WATER ALLIANCE
FOR
OPERATIONS ON THE WHITE RIVER AT BUCKLEY, WASHINGTON

This AGREEMENT (hereinafter the “Agreement”) is entered into this __________ day of ________________, __________, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Seattle District (hereinafter the “District Engineer”), and the Cascade Water Alliance, a Washington municipal corporation, (hereinafter “CWA”), represented by the Chief Executive Officer (hereinafter “CEO”) (collectively, the “Parties”).

WITNESSETH, THAT:

WHEREAS, CWA operates a water diversion headworks (the “Diversion Headworks”) on the White River near Buckley, Washington, and this headworks consists of diversion flume, head gates, flow control gates, operating decks and roadways, sluiceway, ancillary buildings, and appurtenances and associated facilities;

WHEREAS, the Mud Mountain Dam was authorized for construction by Section 5 of the Flood Control Act of 1936, Public Law 74-738, and this authorization included the authority to construct and operate a Fish Passage Facility;

WHEREAS, the Government and CWA’s predecessor in interest Puget Sound Power and Light (“Puget”) entered into an Agreement for Construction of Fishway and Appurtenant Facilities for Mud Mountain Dam, Washington on February 2, 1948 regarding the construction, operation and maintenance of a fish trap facility on Puget-owned property;

WHEREAS, the Government will construct the Mud Mountain Dam Fish Passage Facility (hereinafter the “Fish Passage Facility” as defined in Paragraph I.a. of this Agreement) adjacent to CWA’s headworks and this Fish Passage Facility will include a barrier, levees, scour protection, water intakes, fish ladder entrances, fish ladder, holding pools, trap and haul, roadways, and appurtenances;

WHEREAS, concurrent with this Agreement, the CWA has granted a perpetual, exclusive easement and right-of-way to the Government for the location, construction, operation, maintenance, alteration, patrol and replacement of the Fish Passage Facility and the demolition of the existing barrier dam and fish trap facility, to be recorded in an easement deed (hereinafter “Easement”) reserving all its remaining rights and privileges associated with the Easement property including its “Water Rights” as defined below;

WHEREAS, the Government will operate the Fish Passage Facility for the purpose of passing fish upstream around Mud Mountain Dam, and the Government will cooperate with
fishery managers to include the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians and the State of Washington, to include providing access to the Mud Mountain Dam Fish Passage Facility under the terms of the Easement;

WHEREAS, pursuant to the Agreement Between the Department of the Army and Cascade Water Alliance for Additional Work in Connection with Construction of Mud Mountain Dam Fish Passage Project (the “Additional Work Agreement”) of even date herewith the Government will also undertake construction of a sluiceway and other modifications to CWA’s Diversion Headworks (the “Headworks Improvements”) in connection with construction of the Fish Passage Facility;

WHEREAS CWA and the Government want to establish certain operational requirements and protocols, as set forth herein, to be followed so that the Parties respective adjacent facilities will not adversely affect the facilities or operations of the other party and CWA can fully exercise its Water Rights in accordance with the Easement;

NOW, THEREFORE, the Government and CWA agree as follows:

1. Definitions.

   a. The term “Fish Passage Facility” means a fish barrier and fish passage facility, as generally described in the FY 2015 Design and Execution Document, Mud Mountain Dam Upstream Fish Passage Project, Flood Control Act of June 22, 1936, Pierce County WA, dated April 24, 2015 and approved by the Director of Civil Works on May 11, 2015 (hereinafter the “Decision Document”).

   b. An “Outage” is defined as an event where the Government lowers the pool behind the barrier structure below elevation 666.5 feet through operation of the Fish Passage Facility’s gates, unless such operation is at the request at the CWA.

   c. The term “Water Rights” means CWA’s right to divert and of beneficial use of water from the White River as provided and at the location identified in State of Washington Water Right Permit No. S2-29920(A) - (B) (priority date June 20, 2000) and Certificate of Change of Water Right No. S2-CV1-2P168(B) (priority date April 17, 1895).

2. Facility Maintenance.

   a. Upon completion of construction of the Government’s Fish Passage Facility and CWA’s Headworks Improvements, the southerly wall of the barrier foundation and abutments of the Fish Passage Facility constitutes the dividing line between the Government and CWA facilities, so that the Government’s facility is to the north of this dividing line and CWA’s facility is to the south as shown on the attached Exhibit A.

   b. The Parties agree that they will own and maintain their facilities as their own assets.
c. Cascade will maintain and repair the surface of the southerly wall of the barrier foundation and abutments of the Fish Passage Facility.

d. The Government will maintain and repair the structure and foundation of the southerly wall of the barrier foundation and abutments of the Fish Passage Facility.

e. Within the Government’s Fish Passage Facility, the Muckleshoot Indian Tribe will own, operate and maintain fixtures to supply water to the adjacent Muckleshoot Indian Tribe hatchery and to discharge effluent from this hatchery to the White River.

3. Communication and Coordination.

a. The Operations Points of Contact are:

For the Government:
Jonathan D. Norquist, Operations Project Manager
30525 SE Mud Mountain Road
Enumclaw, WA 98022
Jonathan.Norquist@usace.army.mil
206-764-3717

For CWA:
Michael Gagliardo, Director of Planning
520 112th Ave. NE Suite 400, Bellevue WA 98004
mgagliardo@cascadewater.org
(425) 453-1503

A party may change its Operations Point of Contact by giving written notice to the other party.

b. Upon completion of the Fish Passage Facility, the Government and CWA will adhere to the Communications and Coordination Protocol in Appendix 1. Appendix 1 may be modified at any time by mutual written agreement of the Operations Points of Contacts of both Parties.


a. The Government agrees to maintain a pool behind the barrier structure within a normal operating range sufficient to allow CWA to fully exercise its Water Rights. The Government intends to initially maintain a pool behind the barrier structure within a normal operating range between elevation 672.0 feet to elevation 673.5 feet for the purpose of diverting water for operation of the Fish Passage Facility fish way based on the contract specifications and drawings in Solicitation Number W912DW18R0001 issued by the Government on October 2, 2017. The Parties believe this range is capable of enabling CWA to fully exercise its Water Rights. The Government’s need for managing the movement of sediment through the barrier structure will likely require operating the forebay pool for certain periods below this range, but above elevation 666.5 feet. Currently, the Parties do not know the frequency and duration of these sediment management operations.
b. Once the Fish Passage Facility is completed and placed in operation, the Government and CWA will cooperatively develop a mutually acceptable Joint Operations Protocol Manual to be completed no later than twelve (12) months following completion of CWA’s Headworks Improvements. This Joint Operations Protocol Manual will contain the operational protocols related to required pool range, timing, duration and other related parameters necessary for coordination of Government and CWA operations, such as: fish trap operations, CWA diversion, and sediment sluicing. The Joint Operations Protocol Manual shall be reviewed at least annually, and updated if necessary, during one of the Quarterly Meeting provided for in the Communication/Coordination Protocol in Appendix 1.


d. If after the Fish Passage Facility is completed and placed in operation, the Parties are unable to satisfactorily meet the operational requirements of the Fish Passage Facility and CWA’s diversion headworks while maintaining the normal operating range specified above, the Parties agree to work together in good faith to establish an alternative adaptive management regime which will meet the operational requirements of the Fish Passage Facility and CWA’s diversion headworks to allow CWA to fully exercise its Water Rights.

5. Government Operations.

a. Except in an emergency, the Government shall provide CWA advance notice of when the pool will be outside the normal operating range established in Joint Operations Protocol Manual during the weekly meeting provided for in the Communication and Coordination Protocol described in Appendix 1.

b. The Government will not initiate an Outage (as defined in Paragraph 1.b. above) unless the Parties have a mutually agreed upon a work plan for such Outage.

c. During an Outage, the Government will conduct fish protection and recovery operations in CWA’s diversion flume as required by the Endangered Species Act. CWA will provide the necessary real estate access rights for the Government to enter the flume to perform fish protection and recovery. The Government will protect and recover fish in CWA’s diversion flume in accordance with Appendix 2. Appendix 2 may be modified at any time by mutual written agreement of the Operations Points of Contacts of both Parties.

6. Notice. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:
If to CWA:

Cascade Water Alliance
Attention: Michael Gagliardo, Director of Planning
520 112th Ave NE
Suite 400
Bellevue, WA 98004

If to the Government:

U.S. Army Corps of Engineers Seattle District
Attention: Mud Mountain Dam Operations Project Manager
30525 SE Mud Mountain Road
Enumclaw, WA 98022

A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

7. Dispute Resolution.

a. The Parties will resolve any disagreement on whether the Government's operation of the Fish Passage Facility is interfering or has interfered with CWA's ability to fully exercise its Water Rights in accordance with the Agreement Between the Department of the Army and the CWA for Dispute Resolution Procedures in Connection with the Mud Mountain Dam Fish Passage Project.

b. If the Parties disagree on any matter not subject to subparagraph 7.a., the issue will be elevated to the Operations Points of Contact described in subparagraph 3.a. above. If resolution cannot be reached at that level, the issue will be elevated to the District Engineer and CEO. The Parties will work to address the issues as expeditiously as possible under the circumstances. The Parties recognize that a disagreement that initially is not subject to subparagraph 7.a. may evolve into one that is subject to subparagraph 7.a. In such event, either Party may then invoke subparagraph 7.a, by notice to the other, and the Parties will then proceed in accordance with the Agreement Between the Department of the Army and the CWA for Dispute Resolution Procedures in Connection with the Mud Mountain Dam Fish Passage Project.

c. As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement.
8. By and between Parties to this Agreement, execution of this Agreement terminates the Agreement for Construction of Fishway and Appurtenant Facilities for Mud Mountain Dam, Washington, dated February 2, 1948, effective upon mobilization of the Government’s Fish Passage Facility construction contractor. The Parties agree to cooperate in seeking reasonable documentation of the confirmation and concurrence by the Washington State Department of Fish and Wildlife in such termination.


10. Upon completion of project construction, portions of the existing easement for the fish trap and certain improvements will no longer serve any useful purpose to the Government and will become excess to the needs of the project. The Government will dispose of this property to CWA in accordance with policy and regulation governing the disposal of real property and improvements, but without payment of additional consideration by CWA. A map showing the excess easement area is attached as Exhibit B and the improvements consist of a control house and the remaining structure/foundation of the existing fish trap not otherwise noted for re-use or demolition in the contract drawings and specifications in solicitation number W912DW18R0001 issued by the corps on October 2, 2017, as amended.

11. This Agreement does not document nor provide for the exchange of funds or manpower between the Parties nor does it make any commitment of funds or resources and nothing in this Agreement shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. Nothing in this Agreement may be considered as implying that the Congress will at a later date authorize and appropriate funds to meet deficiencies. This Agreement is neither a fiscal nor a funds obligation document. The provisions of this clause are without prejudice to any rights the Parties may have to make a claim or pursue remedies under applicable laws.

12. This Agreement may be modified by the written agreement of the Parties, duly signed by their authorized representatives or as provided herein.

13. This Agreement is not transferable except with the written consent of the Parties.

15. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

16. Each Party reserves all of its rights and interests except as explicitly addressed by the terms of this Agreement.

17. This Agreement shall be binding on the Parties upon mutual execution by the parties and shall be effective upon mobilization of the Government’s Fish Passage Facility construction
contractor. This Agreement shall continue in force so long the Government’s Fish Passage Facility is authorized. This Agreement may be terminated by written agreement of the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

<table>
<thead>
<tr>
<th>CASCADE WATER ALLIANCE</th>
<th>THE DEPARTMENT OF THE ARMY</th>
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<tbody>
<tr>
<td>Chuck Clarke</td>
<td>Mark A. Geraldi</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>Colonel, Corps of Engineers</td>
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<tr>
<td></td>
<td>District Engineer</td>
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<td>Date:</td>
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APPENDIX 1
Communications and Coordination Protocol

1-1. Quarterly Meetings. Both Parties will participate in a quarterly operational coordination meeting which will cover operational or maintenance activities of Mud Mountain Dam, the Fish Passage Facility, the CWA headworks flow control and sluiceway gates (hereinafter the “Cascade Gates”) and any other activities that the Parties anticipate will impact White River flows. This quarterly meeting will be held during the first week of January, April, July and October or as otherwise agreed to by the Parties.

1-2. Weekly Meetings. Both Parties will participate in a weekly face-to-face meeting to discuss anticipated gate operations or other operational or maintenance activities for Mud Mountain Dam, the Fish Passage Facility, and the Cascade Gates. CWA will provide a written report by email of the weekly face to face meeting and will include at a minimum:

   a. Schedule and nature of activities, to include: description, start date and time, duration, and completion date and time.

   b. Anticipated instream flow impacts at the Barrier Structure and the Buckley Gage described as the anticipated change in c.f.s.

   c. Anticipated change in pool elevation at the Barrier Structure and the duration of this elevation change.

   d. The ramping rates to be utilized at the Barrier Structure, Cascade Gates, Mud Mountain Dam, and the Buckley Gage.

1-3. Daily Calls. Both Parties will conduct daily telephone communication to confirm actual activity parameters and schedule, no later than 9:00 AM each day.

1-4. Changes. Both Parties will provide at least 24 hours advance notice of any changes to the activities and parameters which were discussed at the most recent weekly meeting.

1-5. Emergencies. Both Parties will provide notification of emergency actions as soon as practical under the circumstances, but no later than 12 hours after the action has been initiated.

1-6. Representatives. The following are the personnel anticipated to participate in the meetings and call, but either Party may substitute or add personnel.

<table>
<thead>
<tr>
<th>Event</th>
<th>Government</th>
<th>CWA</th>
</tr>
</thead>
</table>
| Quarterly Meeting | • MMD Operations Supervisory Staff  
                 | • Water Management        | • Operations Manager   
                 |                        | • Director of Planning  
                 |                        | • Contract Operator     |
| Weekly Meeting | • MMD Operations Site Staff  | • Contract Operator   |
| Daily Call   | • MMD Operations Site Staff  | • Contract Operator   |
APPENDIX 2
Fish Protection and Recovery

2-1. In the event of an Outage (as defined in paragraph 1.b.), the Government shall be responsible for fish protection and recovery in the CWA flume.

2-2. In order to prepare for an Outage:

a. When the Government determines that there is a reasonable chance there will be an Outage, the Government will notify and consult with CWA in accordance with Appendix 1, Communications and Coordination Protocol. This notification and consultation will take place not less than fourteen (14) days prior to the anticipated date of the Outage. The Government and CWA will establish a communication schedule such that the Government will provide CWA with no less than three (3) days’ notice of the actual date of the Outage.

b. The Government’s advance notification to CWA will allow the Parties sufficient time to jointly develop and agree upon a work plan for the installation of a temporary weir in the flume that will create a backwater condition in the flume from the temporary weir upstream to CWA’s intake.

c. The work plan will include: the location of the temporary weir, the time of placement of the weir, the maximum duration of the Outage, and planned fish rescue operations.

2-3. Fish Protection.

a. The Government will provide equipment and material to install a temporary weir in the flume to impound water for fish within the flume.

b. In accordance with the work plan developed with CWA, the Government will place, maintain, and remove the temporary weir.

2-4. Fish Recovery. In the event that the Outage exceeds the duration specified in the work plan, the Government will conduct fish recovery operations to remove fish from the water impounded in the CWA flume.

2-5. CWA will provide space on its property for the Government to store equipment and materials for the temporary weir.
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CASCADE WATER ALLIANCE
FOR DISPUTE RESOLUTION PROCEDURES
IN CONNECTION WITH THE
MUD MOUNTAIN DAM FISH PASSAGE PROJECT

This AGREEMENT (hereinafter the “Agreement”) is entered into this _______ day of ________, ________, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Seattle District (hereinafter the “District Engineer”), and the Cascade Water Alliance, a Washington municipal corporation, (hereinafter “CWA”), represented by the Chief Executive Officer (hereinafter “CEO”) (collectively, the “Parties”).

WITNESSETH, THAT:

WHEREAS, CWA has the right to divert and of beneficial use of water from the White River as provided and at the location identified in State of Washington Water Right Permit No. S2-29920(A) - (B) (priority date June 20, 2000) and Certificate of Change of Water Right No. S2-CV1-2P168(B) (priority date April 17, 1895) (the “CWA Water Rights”);

WHEREAS, CWA operates its Buckley Headworks in Buckley, Washington, for the purpose of exercising the CWA Water Rights;

WHEREAS, the Government intends to construct and operate the Mud Mountain Dam Fish Passage Facility (“Fish Passage Facility”) adjacent to CWA’s Buckley Headworks for the purpose of passing fish around Mud Mountain Dam; and

WHEREAS, CWA and the Government are parties to the Agreement for Operations on the White River at Buckley, Washington, which incorporates this Agreement in order to establish the procedures the Parties will follow for purpose of attempting to resolve certain disputes.

NOW, THEREFORE, the Parties agree as follows:

1. “Dispute” as used in this Agreement is defined as a disagreement between the Parties only as to whether the Government’s operation of the Fish Passage Facility is interfering or has interfered with CWA’s ability to fully exercise its Water Rights, pursuant to section 7.a. of the Parties’ Agreement for Operations on the White River at Buckley, Washington.

2. The Parties shall cooperate in good faith while resolving any dispute that may arise because of the Government’s operation of the Fish Passage Facility and CWA’s operation of the Buckley Headworks.
3. The Parties agree to endeavor to resolve a dispute at the lowest organizational level before seeking to elevate the dispute.

4. A dispute that cannot be resolved by the Government’s Mud Mountain Dam Operations Project Manager (“OPM”) and the Cascade Water Alliance Director of Planning (“Director of Planning”) shall be subject to the procedures outlined in this agreement.

5. A dispute that cannot be resolved by the OPM and Director of Planning after 10 days may be immediately elevated by either the Government or CWA to the Commander/District Engineer for the Seattle District (District Engineer) and the Chief Executive Officer of the Cascade Water Alliance (CEO) by notice to the other party which may be delivered telephonically and confirmed by email. A dispute is to be considered as not “resolved” either if the parties have not reached agreement or either party fails to respond by the specified time periods set forth herein. The OPM and Director of Planning shall each provide to the District Engineer and CEO with a written statement identifying the issues originally in dispute, any issues that have already been resolved, and the issues remaining to be resolved.

6. If the District Engineer and CEO are unable to resolve the dispute within 14 days of elevation, either the District Engineer or CEO may elevate the dispute to the Commander/Division Engineer for the Northwestern Division of the U.S. Army Corps of Engineers (Division Engineer), by notice to the other party which may be delivered telephonically and confirmed by email. The Division Engineer shall further consult with the CEO and have 21 days from elevation to resolve the dispute with the CEO, except that the CWA has the option of extending this period to allow consultation with Board of Directors.

7. If the Division Engineer and CEO are unable to resolve the dispute within the time period set forth above, the Parties may submit the dispute to confidential non-binding arbitration to assist the parties as they attempt to resolve the dispute prior to initiating litigation. Either party may initiate the confidential non-binding arbitration by delivery of written notice to the other party.

   a. The Parties shall select a mutually acceptable, neutral and impartial third party to assist in resolving the dispute, with first preference for a neutral from a federally established organization, such as the U.S. Institute for Environmental Conflict Resolution or a similar organization. Arbitration shall be conducted by one qualified neutral arbitrator selected by both Parties. The arbitrator shall be selected through a process in which each Party, beginning with the Party initiating the non-binding arbitration, alternatively strikes a name from a roster of qualified neutral and impartial third party arbitrators. The last remaining name will be the selected arbitrator. The roster of potential arbitrators for selection shall be provided by an organization such as the U.S. Institute for Environmental Conflict Resolution or a similar organization.

   b. If relevant to the dispute, the neutral shall issue a confidential, non-binding finding of fact as to whether or not the Government, through its operation of the Fish Passage Facility, is interfering or has interfered with CWA’s ability to fully exercise its Water Rights. Such a
finding will include consideration of compliance with agreed upon diversions and fish passage operations under the Operations Agreement.

c. The Parties agree to conduct the arbitration process with all due speed in accordance with any time-sensitivities associated with the underlying dispute. All arbitration proceedings hereunder shall be conducted in the City of Seattle. Any non-binding findings of facts requested of the third-party neutral shall be rendered within one hundred eighty (180) days after their appointment, and shall be in writing. The Parties have included time limits in order to expedite the proceeding, but they are not jurisdictional, and the third-party neutral may for good cause allow reasonable extension or delays, which shall not affect the validity of the decision.

d. Each Party will be responsible for paying an equal share of the arbitration costs as such costs are incurred, in accordance with paragraph 11.

8. When a dispute is resolved at any stage, the Parties shall memorialize the resolution in writing.

9. When a dispute arises from the Government’s actual or proposed change in its operations of the Fish Passage Facility from what has been previously agreed to by the parties, the Government agrees it will not implement the changes, unless required by an emergency or to avoid imminent injury to life, property, or the environment, until the dispute resolution process set forth in this Agreement, including any confidential, non-binding third-party facilitated process initiated by either party has been completed.

10. Seeking resolution of a dispute under this Agreement may involve the disclosure by the Parties of confidential, privileged, or otherwise protected information. Upon completion of the process under this Agreement, each Party will return to the other Party all records identified by the other Party as containing confidential, privileged, or otherwise protected information (identification of documents will occur through document markings, or other timely and clear means). Information that is used or developed while seeking resolution of a dispute under this Agreement shall not be disclosed to any third party without the consent of the parties under this agreement, unless compelled to do so by legal process. Upon receipt by CWA of any request for public records that encompasses Government records, CWA will immediately notify the Government, and upon the Government’s request, the Government and CWA will immediately seek a protective order in the relevant forum, to the extent such an order is available under applicable law. Further, the Parties agree that they shall not inquire in any fashion or make any representation whatsoever, in any legal or administrative proceedings, about any confidential, privileged, or otherwise protected information presented for the purpose of resolving a dispute under this Agreement. Information that is otherwise inadmissible or not discoverable under applicable rules of evidence or rules of civil procedure shall not be rendered admissible or discoverable merely because of its use or development in a proceeding under this Agreement. The parties expressly agree that, in the interest of facilitating resolution of disputes and in the public interest, any and all non-binding findings of fact rendered by a third-party under this Agreement will be inadmissible in any legal or administrative proceeding.

11. In the event that at any time, or from time to time, there is a change to the organizational structure of either party that eliminates any of the identified managerial positions in this
Agreement, the newly created position within the Party’s organizational structure that most closely approximates the identified managerial positions in this Agreement shall be substituted. In the event at the time a dispute arises, any of the District Engineer, Division Engineer or CEO is unavailable, the persons formally authorized as “acting” in those capacities at that time are designated to perform the functions set forth in this Agreement.

12. This Agreement does not document nor provide for the exchange of funds or manpower between the Parties nor does it make any commitment of funds or resources and nothing in this Agreement shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. Nothing in this Agreement may be considered as implying that the Congress will at a later date authorize and appropriate funds to meet deficiencies. This Agreement is neither a fiscal nor a funds obligation document. The provisions of this clause are without prejudice to any rights the Parties may have to make a claim or pursue remedies under applicable laws.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: __________________________
    Mark A. Gerald
    Colonel, U.S. Army

CASCADE WATER ALLIANCE

BY: __________________________
    Chuck Clarke
    Chief Executive Officer

DATE: _________________________

DATE: _________________________