

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND
THE TULALIP TRIBES OF WASHINGTON TO RELOCATE WATERLINE FOR THE
CULVERT REPLACEMENT NEAR 6304 19TH AVE NE PROJECT

Effective Date through December 31, 2027

This Interlocal Agreement Between Snohomish County and the Tulalip Tribes of Washington to relocate waterline for the Culvert Replacement Near 6304 19th Ave NE Project (this “Agreement”), is made by and between Snohomish County, a political subdivision of the State of Washington (the “County”), and the Tulalip Tribes of Washington, a federally recognized Indian Tribe pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 5123) (the “Tribes”) (collectively, the “Parties”).

RECITALS

- A. The County plans to replace a failing 24-inch corrugated metal culvert under 19th Ave NE which conveys Hibulb Creek to the Snohomish River estuary (the “Project);
- B. The Tribes’ 12-inch waterline is in the project area and will need to be relocated;
- C. The Tulalip Tribes of Washington is a federally recognized Indian Tribe organized under its Constitution and Bylaws approved by the Secretary of the Interior on January 24, 1936 pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 5123); and
- D. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes public agencies, including the County and the Tribes, to enter into cooperative agreements to make the most efficient use of their respective resources; and
- E. This Agreement is made pursuant to and shall be governed by the Interlocal Cooperation Act.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Tribes agree as follows:

1. PURPOSE OF AGREEMENT

The relocation of the Tribes’ waterline in the County right-of-way to support the Culvert Replacement Near 6304 19th Ave NE project as described in Appendix A.

2. EFFECTIVE DATE AND DURATION OF AGREEMENT

- A. Effective Date: As provided by RCW 39.34.080, this Agreement shall take effect when it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website.
- B. Notwithstanding the effective date of this Agreement, this Agreement shall govern work performed by the County starting from October 1, 2025, through the effective date of the Agreement, as the parties agree to ratify each party's conduct from October 1, 2025, through the effective date of the Agreement.
- C. Duration: The term of this Agreement is from the Effective Date through December 31, 2027, (the "Term") unless terminated sooner as provided herein. In the event the County funding becomes unavailable for the County's Culvert Replacement Near 6304 19th Ave NE Project, all work shall terminate in accordance with provisions of this Agreement upon the last day of funding.

3. SCOPE OF WORK

- A. The County shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for, or incidental to, the performance of the work set forth in Appendix A, attached hereto and incorporated herein.
- B. The County will not be required to perform work for the Tribes in excess of work specified in Appendix A to this Agreement except by mutual agreement in a written amendment to this Agreement and signed by both Parties.

4. PERFORMANCE

- A. The County agrees to complete all work described in Appendix A in a timely and professional manner. The County may use subconsultants or subcontractors, with the Tribes' prior written approval, to complete any portion of the work described in Appendix A. The Tribes agrees that some or all of the work required may be performed by a contractor. If at any time the County cannot fulfill its responsibilities under this Agreement, the County shall notify the Tribes thereof in writing, together with an explanation of why said responsibilities cannot be fulfilled.
- B. Funding contingencies:
 - i. The Parties' obligations after December 31, 2026, are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with applicable law.
 - ii. The Parties acknowledge that the work to be performed pursuant to this Agreement will be conducted by a County's contractor that as of the Effective Date

had not yet been selected through the procurement process. Accordingly, the Parties acknowledge that the estimated budget set forth in Appendix B to this Agreement may not completely fund the work contemplated in the Scope of Work set forth in Appendix A of this Agreement. In the event that the budget set forth in Appendix B will not completely fund the work, the Tribes shall not be required to allocate additional funding unless the Parties mutually agree through a written Amendment to this Agreement. The Tribes will compensate the County for any work performed under the Scope of Work up to Eighty-three Thousand Five Hundred Eighty-Two dollars (\$83,582).

5. ADMINISTRATION OF AGREEMENT

Each party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer such party's participation in this Agreement. The parties' Administrators shall be the following individuals:

County's Administrator:
Tracy Gilson, Engineer IV

Snohomish County DCNR
Surface Water Management
3000 Rockefeller Ave, M/S 303
Everett, WA 98201

Tribes' Administrator:
Mike Leslie
Tulalip Utilities Program Manager
Tulalip Tribes of Washington
P.O. Box 277
Tulalip, WA 98271

Any notice required by a party to this Agreement shall be provided to the other party's Administrator.

6. MONITORING & REPORTING

The Tribes Utility Department shall be responsible for monitoring the performance of the County's work under this Agreement.

7. COMPENSATION

The budget for work to be performed under the Agreement is Eighty-three Thousand Five Hundred Eighty-Two dollars (\$83,582.00), as set forth in Appendix B to the Agreement, attached hereto and incorporated herein. The Tribes shall have no obligation to pay any invoice from the County that would cause the total payments made to the County by the Tribes under this Agreement to exceed Eighty-three Thousand Five Hundred Eighty-Two dollars (\$83,582.00), as set forth in Appendix B. The Tribes shall compensate the County only for such costs that are: 1) incurred during the Term of this agreement; and 2) are necessary to perform the work described in Appendix A of this Agreement.

The Tribes shall have the right to withhold payment of all or any portion of an invoice provided under Section 8 below if the Tribes has a reasonable basis to believe that the work performed by the County is not consistent with or outside of the Scope of Work

defined in Appendix A. In such an event the Tribes shall provide the County a written statement identifying and describing problems or deficiencies it perceives on or before the date such payment is due. Upon receipt of such notice the County shall have twenty (20) days to either correct the problem or object to the Tribes' determination in writing. In the event the Tribes object, the matter shall be submitted to a consulting engineer for review to determine whether work performed by the County is consistent with the Scope of Work, and if not, what remedial action is required to bring the work into compliance. The consulting engineer will be mutually agreed upon by both parties. The Tribes' right to withhold payment shall last until the work has been brought into compliance or the work is deemed consistent with the approved scope and task by consulting engineer.

8. INVOICING AND PAYMENT

The County shall submit a quarterly invoice to the Tribes no later than the 15th of the month following the end of the quarter. The invoice shall accurately and completely document all labor costs, materials costs, equipment costs and other reimbursable costs for services that meet the requirements of this Agreement. The Tribes shall pay each quarterly invoice within thirty (30) days of receipt unless it objects under Section 7 of this Agreement.

9. AUDIT AND INSPECTION

The Tribes and the County shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The County and Tribes' records shall be available for inspection and audit by one another, the State Auditor, federal auditors, and any persons duly authorized by the parties. The County and Tribes shall preserve and make such records available to said parties until expiration of six (6) years from the date of final payment under this Agreement.

10. ENTIRETY OF AGREEMENT

This Agreement constitutes the entire agreement between the County and the Tribes and supersedes all proposals, oral and written, and all other communication between the Parties in relation to the subject matter of this Agreement. No other agreement exists between the County and the Tribes with regard to the instant subject matter except as expressly set forth in this instrument. Except as otherwise provided herein, no modification of this Agreement shall be effective until reduced to writing and executed by both Parties.

11. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be altered or amended by mutual agreement of both Parties. Such alterations or amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

12. TERMINATION

Either party may terminate this Agreement upon fifteen (15) days' prior written notice to

the other party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

- A. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the Tribes may terminate this Agreement by providing written notice to the County fifteen (15) days prior to the effective date of such withdrawing, reduction or limitation of funding. The termination shall be effective on the date specified in the termination notice. The County shall continue to perform its obligations through the date of termination. The obligation of the Tribes to make final payment for work performed and costs incurred through the date of termination shall survive the termination of this Agreement.
- B. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

13. RIGHTS AND REMEDIES

In no event shall any payment by the Tribes to the County constitute a waiver by the Tribes of any breach of covenant or any default that may exist on the part of the County. The making of any such payment by the Tribes while any such breach or default exists shall in no way impair or prejudice any of the Tribes' rights and remedies, hereby expressly recognized, to recover payments or portions thereof, to which the County was not entitled under this Agreement, where any payments were made by mistake, or to pursue any other remedy available to the Tribes with respect to breach or default of this Agreement.

14. INSURANCE

Either party shall maintain its own General Liability insurance and/or self-insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement. The maintenance of, or lack thereof insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party.

15. HOLD HARMLESS

The County agrees to protect, defend and hold harmless the Tribes, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising

out of any actions, errors or omissions of the County, its officials, employees and agents in performing this Agreement except for those arising out of the sole negligence of the Tribes.

The Tribes agrees to protect, defend and hold harmless the County, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any actions, errors or omissions of the Tribes, its officials, employees and agents in performing this Agreement except for those arising out of the sole negligence of the County.

In no event shall either party be responsible for indemnifying the other party for damages caused by or resulting from the sole negligence of that party, and its elected officials, officers, employees, agents, contractors and/or subcontractors.

16. VENUE, WAIVER OF SOVEREIGN IMMUNITY, DISPUTE RESOLUTION, AND INTERPRETATION

- A. The Tribes expressly agrees to waive its sovereign immunity for the limited purpose of lawsuits or other legal proceeding brought by the County to enforce the terms of this Agreement in the courts of the State of Washington or United States.
- B. Limited Waiver of Sovereign Immunity. The Tribes expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal or tribal court without the Tribes' consent. By entering into this Agreement, the Tribes hereby grants a limited waiver of sovereign immunity to the County only, subject to and conditioned on the following:
 - a. This limited waiver of immunity shall not extend to interpretation of the Treaty of Point Elliott, 12 Stat. 927, or the rights reserved by the Tribe under that Treaty. This waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County.
 - b. This limited waiver of immunity in favor of the County shall commence and become effective as of the effective date of this Agreement and shall remain in effect and extend for three (3) years from the ending date under Section 2 or three (3) years from earlier termination of this Agreement as set forth in Section 12 herein. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above three (3) year period that extends from the ending date or early termination of this Agreement under Section 12, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribes or notice to the County.

- c. Nothing contained in this Agreement shall be deemed a consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribes except as specifically described herein.
 - d. Nothing in this Agreement nor any activity of the Tribes shall implicate or in any way involve the trust assets or credit of the Tribes or any of its members.
 - e. The Tribes hereby expressly provides a limited waiver of sovereign immunity to suit with respect to claims made relating to, or arising under, this Agreement by the County, to interpret or enforce the terms of this Agreement, or to a claim of indemnification by the County. The Tribes' limited waiver for any claim of indemnification will be the insurance limit required by this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Tribes herein and the policy of insurance obtained by the Tribes which agrees that it shall not assert a defense of sovereign immunity to a claim made under the policy to indemnify the County. The Tribes warrants its authority to and agrees to assign over to the County, at its request, any and all of its rights against the insurer to effectuate a payment of its indemnification obligation to the County.
- C. Dispute Resolution. It is intended that any disputes between the parties concerning this Agreement should be resolved by the parties through direct, oral discussion and, if such is not possible, then through the dispute resolution framework established in this Section 16.C. All stated time frames for resolving disputes may be lengthened by mutual consent.
- i. No violation of a covenant, duty or obligation shall be considered a material breach of such covenant, duty or obligation unless and until (1) the complaining party delivers to the other party, by certified mail, return receipt requested or by another means of certifiable delivery, a written notice which identifies the alleged violation of a covenant and demands that the other party cure such violation within ten (10) business days of receiving the written notice, and (2) the other party fails to timely cure the violation. During the same ten (10) business days following certified receipt of the notice of violation, the parties will have one or more government to government discussions, including at least one face to face meeting, to discuss and resolve the alleged breach. Prior to the first face to face meeting, the responding party shall provide the other party with a written response. If a party fails to timely cure following receipt of the notice of violation and the parties do not otherwise resolve their dispute, cessation of that activity after the time allotted for cure has passed shall not be deemed a cure of the alleged breach, except by express waiver of the complaining party. Either party may initiate dispute resolution pursuant to Section 16.C.ii. below to contest the notice of violation and allegation of breach, the failure to cure or the sufficiency of the cure, as the case may be.

- ii. If direct discussions pursuant to Section 16.C.i. above are unsuccessful in resolving the dispute, any party may make a written demand for mediation before a single mediator. If the parties cannot agree on the selection of a mediator within ten (10) business days of the date the written demand letter was received, then the mediation will be administered by J.A.M.S., Seattle, Washington Office, or its successor, using a mediator selected by J.A.M.S. from its roster.
 - iii. If the dispute remains unresolved after fulfillment of the dispute resolution requirements set forth in Sections 16.C.ii. and iii., either party may initiate an action in the courts of the State of Washington to enforce the terms of this Agreement, as provided herein.
- D. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

17. RELATIONSHIP TO EXISTING LAWS

- A. This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable Tribal and federal laws. The provisions of this Agreement shall be construed to conform to those laws. As of the effective date of this Agreement, neither party is aware of any laws, ordinances, rules, regulations, requirements, and/or orders from tribal authorities (“Tribal Legal Authority”) that apply to the County under this Agreement. In the event that the Tribes believes any Tribal Legal Authority applies to the County under this Agreement, the Tribes shall provide written notice to the County’s Administrator identified in Section 5 of this Agreement and describe the source of Tribal Legal Authority. The County shall inform the Tribes’ Administrator identified in Section 5 whether the County agrees that the Tribal Legal Authority applies to the County. If the Parties do not agree on whether the Tribal Legal Authority applies to the County, either party may terminate the Agreement pursuant to Section 12.
- B. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:
1. Applicable state and federal statutes and regulations;
 2. Scope of Work (Appendix A);
 3. Applicable Tribal Legal Authority as described in Section 17A; and
 4. Any other provisions of the Agreement, including materials incorporated by reference.

18. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined by the Tribes.

19. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the Tribes for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW.

20. MISCELLANEOUS

- A. No obligation in this Agreement shall limit the Tribes in fulfilling its responsibilities otherwise defined by law.
- B. No obligation in this Agreement shall limit the County in fulfilling its responsibilities otherwise defined by law.

IN WITNESS WHEREOF, the County and the Tribes have executed this Agreement as of the date of the last party to sign.

SNOHOMISH COUNTY:

TULALIP TRIBES:

Snohomish County, a political subdivision of the State of Washington

Tulalip Tribes of Washington, a federally recognized Indian Tribe

By _____
County Executive

By _____
Title:

Approved as to Form:

Approved as to Form:

Snohomish County
Deputy Prosecuting Attorney

Tulalip Tribes
Attorney

APPENDIX A SCOPE OF WORK

Project Description: Culvert Replacement Near 6304 19th Ave NE

The project replaces a failing 24-inch diameter, corrugated, metal culvert under 19th Ave NE which conveys Hibulb Creek to the Snohomish River estuary. The proposed replacement culvert is a 42-foot long, concrete split box with 9-foot span and 6-foot rise. Concrete wingwalls will be installed to protect errant traffic and allow for a future walkway.

Full road closure with a bypass lane is required to complete the work. A 12-inch Tulalip Tribes water main will need to be relocated. The project is located on the Tulalip Reservation.

Hibulb Creek is a fish bearing stream with a modeled presence of Coho, Steelhead, SR Cutthroat, and Resident Trout. The project will open access to 337 LF of upstream habitat and a Tulalip Tribes future restoration site.

Scope of Work:

The County, as part of the Culvert Replacement Near 6304 19th Ave NE project, will be relocating the Tulalip Tribes Utilities waterline that is in county right-of-way. The County's Culvert Replacement project will replace a failing road culvert with a larger fish passage design culvert.

The County will design and construct a 12-inch diameter, ductile iron waterline. This work will include drafting plans, specifications and engineering estimates, estimate/summary of quantities review, project bidding and award, contract construction, inspection, and construction management.

APPENDIX B BUDGET

The estimated budget for work to be performed under the Agreement is Eighty-three Thousand Five Hundred Eighty-Two dollars (\$83,582). **The Tribes will be invoiced for the actual cost of the project plus Administrative and Engineering costs as listed below.** The Tribes shall have no obligation to pay any invoice from the County that would cause the total payments made by the Tribes to the County under this Agreement to exceed Eighty-three Thousand Five Hundred Eighty-Two dollars (\$83,582).

Contract Summary

Item Number	Description	Quantity	Unit	Unit Price	Total
1	Construction Admin			15%	\$8,085
2	Construction Engineering			5%	\$2,695
3	Design Engineering				\$8,000
4	Ductile Iron Pipe for Water Main 12 in Diam.	57	LF	\$700.00	\$39,900
5	Shoring or Extra Evacuation Class B	500		\$28.00	\$14,000
	Contingency (15%)				\$10,902
Total					\$83,582