


Jefferson County  
Board of Commissioners  
Agenda Request

**To:** Board of Commissioners  
Philip Morley, County Administrator

**From:** Frank Gifford, Public Works Director 

**Agenda Date:** July 25, 2011

**Subject:** Agreement between Jefferson County and Pacific Coast Salmon Coalition, Donkey Creek Culvert Replacement, Clearwater Road, MP 1.29, County Project No. CR1626, County Road No. 107508

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**Statement of Issue:** An agreement between Jefferson County and Pacific Coast Salmon Coalition (PCSC) to replace a culvert on Clearwater Road with a three-sided, concrete box culvert.

**Analysis/Strategic Goals/Pro's & Con's:** PCSC has obtained partial grant funding to replace a culvert across Clearwater Road at Donkey Creek with a fish-passable, three-sided, concrete box culvert. The existing culvert forms a fish passage barrier to 1.4 miles of upstream habitat on Donkey Creek. The County has been working with various partners since 1996 to correct fish passage barriers on County Roads. PCSC will design, manage, and construct the project.

**Fiscal Impact/Cost Benefit Analysis:** The County will provide funding to cover 15% of total project costs, up to a maximum of \$62,000, to be available only on a reimbursable basis at the time of project completion and acceptance. In addition, the County will provide staff time necessary for plan review and limited project inspection. PCSC will provide all other funding through a combination of non-county sources, to complete the \$414,000 project.

**Recommendation:** Please sign the attached three (3) originals of the Agreement. Please return two to Public Works and retain one for your records.

**Reviewed By:**

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Philip Morley, County Administrator

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Date

- The Franchise shall terminate upon the elimination of this right-of-way from County jurisdiction or termination or annexation of the same.
- The County does not waive any rights, powers or privileges to these rights-of-way by granting this Franchise.
- The County shall be held harmless from any damage to the utility in any maintenance or construction work by the County
- Attachment A - Map depicting the area the Franchise will cover.

**Fiscal Impact/Cost Benefit Analysis:**

All costs related to the advertising costs for the hearing notice and the installation, maintenance and repair of the utilities under this Franchise shall be the responsibility of the Applicant.

**Recommendation:**

The Department requests that the Board conduct a public hearing on the Franchise Resolution at 10:30 AM on July 25, 2011 and direct the Chair of the Board to sign the Franchise Resolution approving the Hoh Tribe's request as presented.

**Department Contact: Monte Reinders, 385-9160**

**Reviewed By:**

\_\_\_\_\_  
Philip Morley, County Administrator

\_\_\_\_\_  
Date

AGREEMENT BETWEEN  
JEFFERSON COUNTY  
AND  
PACIFIC COAST SALMON COALITION

Donkey Creek Culvert Replacement  
Clearwater Road MP 1.29  
County Project No. CR1626  
County Road No. 107508

This Agreement is made and entered into by and between Jefferson County, through the Department of Public Works, 623 Sheridan St., Port Townsend, Washington 98368, hereinafter referred to as "County" and the Pacific Coast Salmon Coalition (PCSC), P.O. Box 2527, Forks, WA 98331. For the purposes of this Agreement, it is understood that all references to the County or the Pacific Coast Salmon Coalition also include an appointed designee.

**WHEREAS**, the County owns, operates, and maintains public road rights-of-way, including Clearwater Road at milepost 1.29, which lies in the Northwest 1/4 of Section 29, Township 24 North, Range 12 West, W.M., Jefferson County, Washington; and,

**WHEREAS**, Donkey Creek currently flows across the above-described road right-of-way through three, side-by-side, 3.0 ft. diameter, concrete pipe culverts; and,

**WHEREAS**, the Washington Department of Fish and Wildlife has determined that 1.4 miles of historically productive, upstream salmonid habitat will be restored by removing the blockage formed by the culvert at Clearwater Road; and,

**WHEREAS**, the Pacific Coast Salmon Coalition has secured, or is in the process of securing, through various sources, funding sufficient to complete this project.

**NOW, THEREFORE**, pursuant to the above recitals, the County and the Pacific Coast Salmon Coalition (collectively hereinafter "Parties" to this Agreement) acknowledge and agree to work cooperatively to complete this project in accordance with the following:

**PURPOSE OF AGREEMENT**

The purpose of this Agreement is to provide for the design, permits, construction, construction supervision, and monitoring of a cooperative road improvement project which primarily consists of replacing the existing culvert under Clearwater Road at milepost 1.29 with a three-sided box culvert meeting all applicable State and County design standards.

**SCOPE OF WORK**

The Parties shall undertake and complete the cooperative habitat enhancement project

(hereinafter "project") set out below:

**The Pacific Coast Salmon Coalition will, within the limitations of this agreement:**

1. Provide, through a combination of non-County sources, all funding to complete the project except as stated in the subsequent section of this agreement.
2. Develop, through its licensed engineers and consultants, a three-sided box culvert design meeting all Washington State Department of Transportation (WSDOT) and County road/bridge design standards and develop all required contract documents sufficient to ensure that the project will be constructed to these standards.
3. Coordinate all utility relocations.
4. Obtain all permits required to conduct said work.
5. Obtain right of entry or permanent easements onto lands not owned by the County and provide land surveying as necessary to determine property boundaries.
6. Obtain competitive bids for construction of the project in accordance with public works bidding and contracting laws, including bid advertisement and award, performance bonding, insurance, and prevailing wage requirements.
7. Provide contract and construction management.
8. Construct the project per designs approved by the County. Said design to become an attachment to this agreement and is incorporated herein by reference.
9. Provide full-time construction oversight under supervision of a licensed civil engineer, and the necessary inspection services and material tests to ensure that materials and workmanship meet project specifications.
10. Provide a safe path through the project area for highway-legal traffic at all times.

**The County will, within the limitations of this agreement:**

1. Provide a donation of in-kind staff time as necessary for project coordination with the Pacific Coast Salmon Coalition and limited project inspection.
2. Provide funding on a reimbursable basis to cover 15% of total, documented, project costs, in an amount not to exceed \$62,000. This funding shall be available only on a reimbursable basis after the structure has been installed and accepted by the County.
3. Provide prompt review of project design documents.

4. Inspect the project periodically during construction for conformance to plans and County standards. This shall not be a substitute for or replace the full-time construction monitoring and materials testing required to be performed by the PCSC or their agents under this agreement, as necessary to meet the requirements of the WSDOT Standard Specifications. Jefferson County will not provide any materials testing services.
5. Provide right of entry to the Pacific Coast Salmon Coalition on lands owned by the County.
6. Cooperate with the Pacific Coast Salmon Coalition to generally facilitate successful completion of work under this agreement.
7. Remain the owner of and maintain the completed project.

#### TIME OF PERFORMANCE

The Pacific Coast Salmon Coalition shall complete the project, including submission of reports and/or other required documentation on or before December 31, 2012. The time for performance may be extended through mutual written agreement by both parties. Request for an extension shall occur at least 90 days prior to expiration of this agreement.

#### PROJECT ADMINISTRATION

The Pacific Coast Salmon Coalition shall be responsible for administration of the project. Administration of this Agreement for the Pacific Coast Salmon Coalition shall be conducted by Carl Chastain, or such other persons as may be designated by the Pacific Coast Salmon Coalition. Administration of this agreement for the County shall be conducted by the County Engineer or his designee.

#### DIRECTION AND CONTROL

The Pacific Coast Salmon Coalition agrees that it will perform under this Agreement as an independent contractor and not as an agency, employee, or servant of the County. The parties agree that the Pacific Coast Salmon Coalition is not entitled to any benefits or rights employed by employees of the County. The Pacific Coast Salmon Coalition specifically has the right to direct and control its own activities in accordance with the requirements of this Agreement.

The County will become the owner of the improvements within the right of way after the project is completed. As such, the Jefferson County Engineer shall have the final authority in matters concerning the design and construction of said improvements.

## PAYMENT

The County agrees to provide funding to cover 15% of total project costs, up to a maximum of \$62,000, to be available only on a reimbursable basis after completed construction. The County will provide no reimbursement for any project costs incurred prior to construction if the project is not completed. Under the terms of this agreement, all remaining funding shall be obtained from non-County sources. In addition, the County will provide an in-kind donation of staff time for coordination with the Pacific Coast Salmon Coalition and periodic construction monitoring.

## OVERRUN OF COST ESTIMATE

This Agreement is based on the construction estimate prepared by the Pacific Coast Salmon Coalition, attached as Exhibit B. In the event the project costs exceed the estimated costs, the Pacific Coast Salmon Coalition will be responsible for obtaining the additional funding necessary to complete the project from sources other than the County.

## OTHER FUNDING

This Agreement in no way restricts either party from participating with any public or private agencies, organizations, and individuals or by accepting contributions, gifts or mitigation money to be applied to either party's portion of the planning, engineering, construction, administration, operation, and preservation of this project.

## RIGHT-OF-ENTRY

The County will grant to the Pacific Coast Salmon Coalition the right to enter upon County owned lands necessary to the expedient completion of this project, once certain criteria have been met including development of plans and specifications acceptable to the County Engineer. Construction shall not commence on County-owned property until specifically granted in writing by the County Engineer.

## OWNERSHIP AND MAINTENANCE

The County shall have ownership of the completed project and shall maintain the project as required.

## JOINT HOLD HARMLESS

Each party to this Agreement shall be responsible for damage to persons or property resulting from the negligence on the party of itself, its employees, its agents, or its officers. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any

person, firm, or corporation not a part to this Agreement.

### PERMITS

The Pacific Coast Salmon Coalition shall be responsible for obtaining all permits to complete this project. Jefferson County will not be liable for the failure of the PCSC to obtain or adhere to said permits. The PCSC will be responsible for contractor compliance with said permits.

### ACCESS TO BOOKS/RECORDS

The Parties may, at reasonable times inspect or audit the books and records of either party relating to performance of this Agreement. The Parties shall keep all records required by this Agreement for six (6) years after completion of the project for inspection or audit purposes.

### COMPLIANCE WITH LAWS

All work performed under this Agreement shall comply with all federal and state laws, local laws and ordinances, and applicable permit requirements, including but not limited to requirements of the Shoreline Management Act and the State Hydraulic Code. The project shall meet all public works contracting laws, bidding requirements, and prevailing wage requirements.

### CONFLICT BETWEEN ATTACHMENTS AND TEXT

Should any conflicts exist between any attached exhibit and the text of this Agreement, the text shall prevail.

### TERMINATION OF AGREEMENT

Termination may be sought by either party by providing 30 days written notice to the other party. Such termination shall be effective only after authorized representatives of both parties have agreed in writing to such termination, except, however, that material breach of any contract term may be cause for immediate and unilateral termination of the contract by the County.

### GOVERNING LAW AND STIPULATION OF VENUE

This Agreement shall be governed by the laws of the State of Washington. The parties stipulate that any lawsuit regarding this Agreement must be brought in Jefferson County, Washington.

## WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed nor construed as a waiver of any other term or condition, nor shall the waiver of any breach be deemed or construed as a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

## CONTINGENCY

The obligation of the parties under this Agreement is contingent upon local and state legislative appropriation of necessary funds in accordance with law.

In the event funding from state, federal, county or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, then either party may terminate this Agreement under the "Termination" clause, subject to renegotiation under those new funding limitations and conditions.

## SEVERABILITY

Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

## LANDOWNER AGREEMENT FOR PROJECTS FUNDED BY THE SALMON RECOVERY FUNDING BOARD

The Landowner Agreement for Projects Funded by the Salmon Recovery Funding Board is hereby made an attachment to this agreement, and is included as Exhibit A.

## ENTIRE AGREEMENT

The Agreement merges and supersedes all prior applications, representations, negotiations, approvals, and understandings between the parties hereto relating to the subject matter of this Agreement and, together with the Landowner Agreement for Projects Funded by the Salmon Recovery Funding Board, constitutes the entire Agreement between the parties.



IN WITNESS WHEREOF, the parties have executed this Agreement.

**PACIFIC COAST SALMON COALITION**

Dated: \_\_\_\_\_, 2011

By:



Carl Chastain  
Director

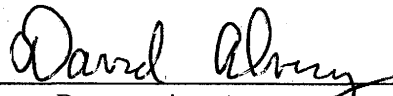
**COUNTY OF JEFFERSON**

\_\_\_\_\_  
John Austin, Chair

\_\_\_\_\_  
Phil Johnson, Member

\_\_\_\_\_  
David W. Sullivan, Member

Approved as to form only this 31<sup>ST</sup>  
day of MAY, 2011.

  
\_\_\_\_\_  
Deputy Prosecuting Attorney

# Exhibit A

## Landowner Agreement

### For Projects Funded by the Salmon Recovery Funding Board

This Agreement, dated and effective beginning the \_\_\_\_ day of \_\_\_\_\_, 2011, is made and entered into by and between the Landowner and Grantee identified herein. The parties intend that all terms of this Agreement shall remain in effect for a period of ten years from the date of project completion, and the agreement shall be binding on all successors in interest during this time.

Landowner Name (Landowner): Jefferson County

Street Address: 623 Sheridan Street

City, State, Zip Code: Port Townsend, WA 98368

Salmon Recovery Funding Board Project Sponsor (Grantee):

Grantee Name: Pacific Coast Salmon Coalition

Street Address: P.O. Box 2527

City, State, Zip Code: Forks, WA 98331

### Purpose of Landowner Agreement

The purpose of this Agreement is to identify and confirm the terms, conditions and obligations agreed upon between the Grantee, who is undertaking a project (Project) funded by the Salmon Recovery Funding Board (SRFB), and the Landowner, who owns the property on which the Project will take place.

The Grantee and Landowner mutually agree to participate in conducting the salmon habitat improvement activities described below on lands owned by Landowner in WRIA 21 Watershed (Water Resource Inventory Area), Jefferson County, County Road Number 107508. The activities are also described in, and in accordance with, the Salmon Recovery Funding Board's Project Agreement No. 10-1767R dated December 10, 2010, into which this agreement, once signed by both parties, becomes incorporated herein.

## **The Grantee Agrees to:**

1. Be responsible for the design and installation of the project, and the conduct and activities of its staff, agents and representatives.
2. Provide the Landowner with a timeline of estimated dates of Project activities, including start and completion dates, and to keep the Landowner informed of progress.
3. Conduct the project-related activities described in the Project Description, as appended to this agreement.
4. Leave all remaining portions of the property in as near pre-project condition as reasonable, or as otherwise agreed upon in writing with Landowner.
5. Inform Landowner of project completion and the dates for this Agreement.
6. Hold harmless the landowner from any liability associated from injuries or damages occurring to workers implementing the project.
7. Identify the specific maintenance and/or monitoring activities that will be provided by grantee in an Attachment (Include frequency and duration).

## **The Landowner Agrees to:**

1. Provide reasonable property access to the Grantee to plan, implement, and complete the project, and to conduct the long-term maintenance and monitoring activities, as described in the Project Description attached to this agreement.
2. Provide the Grantee and SRFB, or their employees, agents, representatives, or assignees, the right to enter the land, at reasonable times, and upon reasonable notice. Entry is solely for project implementation and management purposes, to inspect completed work, and to monitor long-term success of the completed project. Except in case of emergency, reasonable notice shall be given at least 48 hours prior to entry.
3. Not intentionally compromise the integrity of the project;
4. Inform Grantee of all known safety hazards on the property;
5. Identify the specific maintenance and/or monitoring activities that will be provided by landowner in an Attachment (Include frequency and duration).

Landowner has no obligation to provide access to parties other than the Grantee or SRFB. For the purposes of viewing the Project for information or educational purposes, Landowner and Grantee must mutually agree before such third-party access is offered.

## **General Terms**


The Landowner shall notify the Grantee of changes in ownership of the property on which the Project is located within thirty (30) days of transfer. In the event of such transfer of ownership, the Landowner shall provide a copy of this Agreement to the succeeding owner prior to such transfer.

To comply with Executive Order 05-05, Archaeological and Cultural Resources<sup>1</sup>, Grantees may have to complete a cultural resources survey in response to any cultural resources concerns that might arise. Grantees will notify the landowner if a consultation is required. If required, consultations must be completed before construction begins.

This agreement may be terminated by the Grantee, if in its discretion, it determines that circumstances have rendered the Purpose of this agreement impractical to achieve. Termination also may be sought by either party by providing written notice to the other party. Such termination shall be effective only after authorized representatives of both parties have agreed in writing to such termination and SRFB has been provided a thirty (30) day advance written notice of such termination. If, in the event the project is intentionally removed, destroyed, or otherwise compromised in function, the SRFB reserves the right to seek reimbursement for the project costs incurred by, and paid to the Grantee with funding under the aforementioned SRFB Project Agreement.

This Agreement does not authorize the Grantee or SRFB to assume jurisdiction over, or any ownership interest in, the premises. The Landowner retains sole responsibility for taxes, assessments, damage claims, and controlling trespass. The Landowner also retains all benefits and enjoyment of the rights of ownership except as are specifically provided in this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

  
\_\_\_\_\_ 7/13/11  
Grantee Date

\_\_\_\_\_  
Landowner Date

Provide a copy of this Agreement, and any amendments to this Agreement, to the SRFB: Washington State Salmon Recovery Funding Board, PO BOX 40917 Olympia, WA 98504-0917

### **Project Description and Maintenance Responsibilities**

1. Written description of the project-related activities that will occur on Landowner's Property (consistent with project cost elements): (Include restoration/enhancement activities and any

<sup>1</sup> The executive order directs state agencies to review all capital construction and land acquisition projects using state funds for potential impact to cultural resources, including: archeological and historical sites and artifacts, traditional areas, and items of religious, ceremonial, and social uses for tribes. More information can be found at [www.governor.wa.gov/execorders](http://www.governor.wa.gov/execorders)

long-term maintenance needs and effectiveness monitoring activities that will occur in future years.)

There are two blockages on Donkey Cr. that are being addressed with this project. The upper blockage is being designed and implemented by WDNR as a part of their RMAP compliance. The lower is being designed and implemented by PCSC with funding from the SRFB.

The blockages on Donkey Creek consists of three side-by-side concrete culverts that are situated directly under the Clearwater Road at milepost 1.3 south of the Quinault Ridge Road, at RM .22 below the "Picnic Bar," a large gravel bar used for recreation by locals.

In order to keep the plunge pool from undercutting the road small pieces of rip rap were placed in the pool making it impossible for salmon to launch into the pipes and access the habitat above. It appears as though a rock structure was constructed to try and create a back-water effect so salmon could access the culverts; the effort did not produce the desired results, therefore the habitat remains unattainable.

This project when finished will provide access to more than 1200 square meters of spawning habitat and nearly 3,000 square meters of rearing habitat for coho, chum, cutthroat, steelhead and bull trout. The total amount of currently inaccessible habitat to be opened is nearly 2,263 meters or 1.4 miles.

The Pacific Coast Salmon Coalition will be sponsoring and leading the project, however, since Jefferson County owns the road we will be approaching them regarding match funding.

2. Describe the maintenance and monitoring responsibilities of both the Landowner and Grantee for the term of this agreement. Include the activities, frequency and duration of work to be performed.

The project will be monitored for effectiveness and utilization. WDF&W will monitor the site in the for adult spawners via surveys.

# Exhibit B

## Donkey Creek Cost Estimate Three-Sided Box

Prepared by: Pacific Coast Salmon Coalition

ITEM No.	ITEM	APPROX QUANTITY		TOTAL	
<b>PREPARATION</b>					
1	MOBILIZATION	1.0	L.S.	\$38,000	
2	EROSION/WATER POLLUTION CONTROL	1.0	L.S.	\$2,000	
3	ROADWAY EXCAVATION INC. HAUL	262.4	C.Y.	\$25.00 \$6,560	
4	CLEARING AND GRUBBING	1.0	L.S.	\$4,000	
5	SHORING AND CRIBBING OR EXTRA EXCAVATION	1.0	L.S.	\$3,000	
6	REMOVAL OF STRUCTURE AND OBSTRUCTIONS	1.0	L.S.	\$1,800	
7	REMOVAL OF CULVERT	1.0	L.S.	\$15,000	
<b>EARTHWORK</b>					
8	GRAVEL BASE (ROAD)	346.7	TONS	\$30.00 \$10,401	
9	CRUSHED SURFACING BASE COURSE (CULVERT)	90.0	TONS	\$50.00 \$4,500	
10	BORROW COMMON	440.7	TONS	\$9.00 \$3,966	
<b>SURFACING</b>					
11	CRUSHED SURFACING BASE COURSE	54.9	TONS	\$50.00 \$2,745	
12	ASPHALT CONCRETE PAVEMENT CLASS "B"	91.1	TONS	\$200.00 \$18,220	
<b>STRUCTURE</b>					
13	PRECAST 3-SIDED VAULT - UTILITY VAULT	1.0	EA.	\$75,000.00 \$75,000	
14	VAULT INSTALLATION	1.0	EA.	\$20,000.00 \$20,000	
<b>MISC.</b>					
15	TRAFFIC DETOUR	1.0	L.S.	\$35,000	
16	GUARDRAILS	1.0	L.S.	\$10,000	
17	SEEDING, REVEGETATION AND MISC.	1.0	F.A.	\$2,000	
18	STREAM BED MATERIAL	110.0	TONS	\$40.00 \$4,400	
19	QUARRY SPALLS	32.0	TONS	\$50.00 \$1,600	
20	PAINT STRIPE	600.0	L.F.	\$0.50 \$300	
21	UNCLASSIFIED EXCAVATION INC. HAUL	562.2	C.Y.	\$25.00 \$14,055	
22	TRAFFIC CONTROL	1.0	L.S.	\$8,000	
23	SILT FENCE	200.0	L.F.	\$5.00 \$1,000	
24	STREAM DIVERSION	1.0	L.S.	\$13,000	
25	ROCK/LOG GRADE CONTROL	2.0	EA.	\$400.00 \$800	
26	HABITAT LOG	6.0	EA.	\$200.00 \$1,200	
TOTAL:				DOLLARS	\$296,547
Contingency @10%					\$29,655
<b>CONTRACT COST SUBTOTAL</b>					<b>\$326,202</b>
<b>PRELIMINARY ENGINEERING (COMPLETED)</b>					<b>\$25,200</b>
INCLUDES: GEOTECHNICAL REPORT, TOPOGRAPHICAL SURVEY, AND PRELIMINARY DESIGN REPORT					
<b>PRELIMINARY ENGINEERING (REMAINING)</b>					<b>\$25,000</b>
INCLUDES: PLANS, SPECIFICATION, MANAGEMENT, CONSULTATION AND PERMITTING					
<b>CONSTRUCTION ENGINEERING @ 10%</b>					<b>\$37,640</b>
<b>GRAND TOTAL</b>					<b>\$414,042</b>
<b>GRAND TOTAL MINUS SRF BOARD FUNDS*</b>					<b>\$388,842</b>
Total Request from SRF Board					\$326,736
				Match @ 15%	\$62,106
*Jefferson County through SRF Board Provided				\$25,200	