

1901-1047

<p style="text-align: center;">STATE INTERAGENCY AGREEMENT</p>	<p>Organization and Address:</p> <p>United States Department of the Interior US Fish and Wildlife Service Upper Columbia Fish and Wildlife Office 11103 E Montgomery Drive Spokane, Washington 99206 DUNS #: 162835917</p> <p>State of Washington Department of Transportation 1710 South 24th Avenue, Suite 100 Yakima, Washington 98902 DUNS #: 808883995</p>
<p style="text-align: center;">AGREEMENT NUMBER</p> <p style="text-align: center;">GCA5226</p>	<p>Title: I-90 Snoqualmie Pass East Project</p> <p>Description of Work:</p> <p>Assist Washington State Department of Transportation with Project Coordination and Section 7 Endangered Species Act Consultation.</p>

This AGREEMENT is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter called "WSDOT," and the above organization, hereinafter called "USFWS," collectively the "PARTIES" and individually the "PARTY."

WHEREAS, this AGREEMENT is made and entered into pursuant to chapter 47.01 RCW; and the United States Department of the Interior US Fish and Wildlife Service hereinafter called "USFWS" under the authority of the Intergovernmental Act of 1968, (31 USC 6505) and the Fish & Wildlife Act of 1956.

WHEREAS, USFWS has agreed to provide project coordination and Section 7 Endangered Species Act consultation for WSDOT;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, and the attached EXHIBITS "A" and "B", which are incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I GENERAL

WSDOT and USFWS shall coordinate on the I-90 Snoqualmie Pass East Project, hereinafter referred to as the PROJECT, through participation on the Interdisciplinary Team and specific Technical Committees. Furthermore, USFWS will provide ESA consultation through the Wenatchee office for the PROJECT. This work is further detailed in EXHIBIT A, Scope of Work.

II TIME FOR BEGINNING AND COMPLETION

Verbal authorization was given to USFWS to commence work under the terms of this AGREEMENT on July 1, 2007, and that date shall constitute commencement of the AGREEMENT, regardless of the date of execution. This AGREEMENT shall terminate on June 30, 2009, unless terminated before as provided herein.

III SCOPE OF WORK

USFWS 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 Exhibit "A," Scope of Work, attached hereto and incorporated herein. USFWS agrees to fulfill all obligations outlined in EXHIBIT A within the estimated costs outlined in EXHIBIT B, Cost Proposal.

IV AMENDMENTS

This AGREEMENT may only be amended by mutual agreement of the PARTIES. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the PARTIES.

V TERMINATION

Either PARTY may terminate this AGREEMENT upon thirty (30) days written notice to the other PARTY. In the event of termination under this section, the PARTIES will be responsible for completing the obligations incurred under this AGREEMENT up to the date termination becomes effective, and 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.

VI PAYMENT AND BILLING

WSDOT agrees to pay USFWS for actual costs, overhead, and indirect costs for work performed as outlined in EXHIBITS A and B of this AGREEMENT. USFWS will bill WSDOT a federally approved or audited overhead rate. This rate will be applied to the organization's billable employee(s) salary and benefits. Payment for satisfactory performance of the work shall not exceed \$38,342.16 under this AGREEMENT unless the PARTIES mutually agree in writing to a higher amount in accordance with the terms of this AGREEMENT.

Payments shall be made by WSDOT upon receipt of an invoice(s) from USFWS. Invoices will be submitted on a monthly basis. These payments are not to be more frequent than one (1) per month. It is agreed that any partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final audit, all required adjustments will be made and reflected in a final payment. Upon expiration of this AGREEMENT, any claim for payment not already made shall be submitted within twenty-five (25) days after the expiration date or the end of the fiscal year, whichever is earlier.

Invoices shall be mailed to:

Kim Vaughn, Business Manager
WSDOT, I-90 Snoqualmie Pass East Project
1710 South 24th Avenue, Suite 100
Yakima, WA 98902
(509) 577-1881

VII RECORDS MAINTENANCE

Section VII has been intentionally omitted.

VIII HOLD HARMLESS

USFWS shall protect, defend, indemnify, and hold harmless WSDOT, its officers, officials, employees, and agents, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, USFWS's negligent acts or omissions or USFWS's performance or failure to perform with respect to the provisions of this AGREEMENT. USFWS will not be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons or property) is caused by the sole negligence of the WSDOT. Where such claims, suits, or actions result from concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each PARTY's own negligence. This indemnification shall survive the termination of this AGREEMENT.

Each PARTY shall protect and hold harmless the other PARTY from and against all claims, suits, or actions arising from any intentional or negligent act or omission of that PARTY's employees, agents, and/or authorized subcontractor(s) while performing under the terms of this AGREEMENT.

IX EXTRA WORK

Reimbursement to USFWS for any work or other costs not shown in this AGREEMENT shall require a written modification to this AGREEMENT signed by the contracting officers of both PARTIES prior to beginning any of the work or incurring any of the costs to be covered by the amendment.

X DISPUTES

In the event that a dispute arises under this AGREEMENT, the PARTIES agree that before any legal action is initiated, the dispute shall be the subject of informal negotiation between USFWS and the Secretary of WSDOT or their designees. If such informal negotiation fails to resolve the dispute, the dispute shall be submitted to a neutral third party or parties for a recommended resolution. All costs associated with the third member(s) shall be equally shared between the PARTIES.

XI
CONFLICT OF INTEREST

Section XI has been intentionally omitted.

XII
INDEPENDENT CAPACITY

The employees or agents of each PARTY who are engaged in the performance of this AGREEMENT shall continue to be the employees or agents of that PARTY and shall not be considered for any purpose to be employees or agents of the other PARTY.

XIII
ASSIGNMENT

The work to be provided under this AGREEMENT, and any claim arising thereunder, is not assignable or delegable by either PARTY in whole or in part, without the express prior written consent of the other PARTY, which consent shall not be unreasonably withheld.

XIV
WAIVER

A failure by either PARTY to exercise its rights under this AGREEMENT shall not preclude that PARTY from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this AGREEMENT unless stated to be such in a writing signed by an authorized representative of the PARTY and attached to the original AGREEMENT.

XV
MERGER OF PRIOR AGREEMENTS

This AGREEMENT and the exhibits hereto constitute the entire agreement between the PARTIES and supersedes all prior and contemporaneous agreements and understandings between the PARTIES hereto relating to the subject matter hereof.

XVI
BINDING EFFECT

The covenants, terms, conditions, and restrictions of this AGREEMENT shall be binding upon, and inure to the benefit of the PARTIES to this AGREEMENT and their respective successors and assigns.

XVII
AMBIGUITY

If any provision in this AGREEMENT is found to be ambiguous, an interpretation consistent with the purposes of the AGREEMENT that would render the provision valid shall be favored over any interpretation that would render it invalid.

XVIII
SEVERABILITY

If any provision of this AGREEMENT, or the application of such provision to any person or circumstances, is found to be invalid, the remainder of the provisions of this AGREEMENT, or the application of that provision to persons or circumstances other than those which it is found to be invalid, shall not be affected by the invalidity.

XIX
AUTHORITY


Each PARTY warrants to the other PARTY that it has all requisite power and authority to execute and deliver this AGREEMENT and to carry out its obligation hereunder and the transactions contemplated hereby. This AGREEMENT will be duly executed and delivered by the PARTIES and constitutes each PARTY's legal, valid, and binding obligation to perform in accordance with its terms.

XX
GOVERNING LAW AND VENUE

This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Washington. Venue for any action arising from or relating to this AGREEMENT shall be exclusively in the Superior Court for Thurston County, Washington.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year last written below.

UNITED STATES FISH AND WILDLIFE SERVICE (USFWS)

By: 

Printed Name: Theresa Rabot

Title: ^{Acting} ARD – Ecological Services

Date: JUL 10 2007

STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION

By: 

Printed Name: Don Whitehouse

Title: Region Administrator

Date: 7/12/07

Approved as to form:

By Stephen Klasinski
Assistant Attorney General

Date: April 25, 2007

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EXHIBIT A

SCOPE OF WORK

The project involves reconstruction of 15 miles of interstate highway with a multiple-phase implementation schedule that is likely to extend over more than 15 years and results in multiple phased consultations at the corridor end and construction phase scales. This agreement is expected to cover agency coordination on the project at the 15-mile corridor (general) scale and the first phase of construction (specific) scale.

The USFWS will assist WSDOT in the following manner:

1. Project coordination through participation on the Interdisciplinary Team and Technical Committees. This includes ongoing discussions about highway designs and construction methods.
2. Consultation on the project which is likely to involve effects to multiple species (e.g. bull trout, northern spotted owl, marbled murrelet, bald eagle, gray wolf, grizzly bear, and Canada lynx), as well as critical habitat for bull trout. This includes updating the environmental baseline for bull trout in the upper Yakima River basin.
3. Completion of a biological opinion which may address adverse effects to ESA species as well as bull trout critical habitat.
4. Depending upon funding for future project phases, this agreement may be extended.

Point of Contacts:

WSDOT, Administrative: Kim Vaughn (509)577-1881; vaughnk@wsdot.wa.gov

WSDOT, Technical: Jason Smith (509)577-1921; smithjw@wsdot.wa.gov

USFWS: Karl Halupka (509)665-3508; Karl_Halupka@fws.gov

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EXHIBIT B

COST PROPOSAL

Item	Cost
ESA Consultation - 70 days of Karl Halupka's time @ \$324.00 per day (includes benefits)	\$22,680.00
IDT and Technical Committee participation (18 IDT and 9 Technical meetings) @ \$324 per day	\$8,748.00
Subtotal	\$31,428.00
Indirect costs = 22% x \$31,428.00	\$6,914.16
Total Costs	\$38,342.16