

AGREEMENT GCA 5939

This Agreement is made and entered between the STATE OF WASHINGTON Department of Transportation, hereinafter the "STATE," and the Confederated Tribes of the Colville Indian Reservations, P.O. Box 150, Nespelem, WA 99155, hereinafter called the "CCT."

WHEREAS, the CCT has identified a fish passage barrier at South Nanamkin Creek and SR 21 as shown on the vicinity map, Exhibit C, attached hereto and incorporated herein by this reference, and

WHEREAS, the STATE has had to perform emergency maintenance at this site approximately 15 of the last 25 years, and

WHEREAS, this history of emergency maintenance may make this location a candidate for the Chronic Environmental Deficiency Program funding, and

WHEREAS, the CCT wants STATE participation in a future project to be developed to correct the existing problems associated with the SR 21/South Nanamkin Creek culvert crossing and the STATE requires a "Reach Assessment" to begin programming STATE funds for a future project, and

WHEREAS, the STATE and the CCT wish to define the mutual responsibilities for completion of the Reach Assessment, and

WHEREAS, the CCT's Purchasing Operations Manual authorizes the Executive Director to sign this Agreement, see Exhibit D, attached hereto and incorporated herein by this reference,

NOW, THEREFORE, pursuant to RCW 39.34.030 and in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

1. GENERAL

1.1 The STATE shall be responsible for performing a "Reach Assessment" and Fish Passage recommendations to (1) describe the general conditions of the watershed and South Nanamkin Creek in the vicinity of the culvert under SR 21; and (2) provide a list of recommendations on (i) providing fish passage at the culvert and (ii) preventing the chronic maintenance problems at the site. A Scope of Work, EXHIBIT B, attached hereto and by reference made a part of this Agreement gives a background and potential alternatives for correcting the problem.

2. PAYMENT

2.1 The CCT, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect costs incurred by the STATE for the "Reach Assessment" and Fish Passage Recommendations.

2.2 An itemized cost estimate for the work to be performed by the STATE at the CCT's sole expense is marked as EXHIBIT A, attached hereto and by this reference made a part of this Agreement. EXHIBIT A is an estimate only and the CCT agrees that the STATE will bill the CCT for the actual direct and related indirect costs of the work, which the CCT agrees to pay.

2.3 In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on EXHIBIT A, the STATE and CCT agree to amend this Agreement to cover said increase.

2.4 The CCT agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of a billing from the STATE.

3. RIGHT OF ENTRY

3.1 The CCT hereby grants to the STATE a right of entry upon all land in which the CCT has interest on the Colville Indian Reservation, within or adjacent to South Nanamkin Creek as shown on EXHIBIT B for the purpose of conducting said "Reach Assessment and Fish Passage Recommendations.

4. DISPUTES

4.1 Any dispute between the CCT and STATE relating to this Agreement shall be resolved in accordance with the following dispute resolution provision. As a condition precedent to the right to seek judicial relief, a Party shall first attempt to informally resolve the dispute directly with the other Party by giving the other Party written notice of the dispute. Such notice shall describe the nature of the dispute, the position of the Party giving the notice and the proposed resolution of the dispute in reasonable detail. After such notice is given, the Parties shall work diligently and in good faith to resolve the dispute through face-to-face meetings and other contacts at such level or levels of contact as each Party deems necessary and appropriate. The Parties must use this process before instituting legal action. If despite such efforts the dispute is not resolved within thirty (30) days after the date the notice is delivered, then either Party shall have the right to seek judicial relief as provided under this Agreement. The Parties shall be responsible for their own costs, including attorneys fees.

5. VENUE AND CONSENT TO BE SUED

5.1 The CCT agrees to waive its sovereign immunity from suit for the limited purpose of permitting the STATE to enforce the terms of this Agreement. This limited waiver of sovereign immunity is solely for the benefit of the STATE. This limited waiver of sovereign immunity shall not be for, nor shall it be construed as for, the benefit of any other person or entity, and the CCT does not waive its immunity with respect to any action brought by, or on behalf of, any other entity or person. Jurisdiction over any dispute involving this Agreement shall be in the Washington State Superior Court located in Spokane County, Washington. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

6. LEGAL RELATIONS

6.1 Each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the Party. Where such claims, suits, or actions result from concurrent negligence of both Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each PARTY's own negligent acts or omissions.

6.2 This indemnification shall survive the termination of this Agreement.

7. TERMINATION

7.1 The CCT may terminate this Agreement, in whole or in part, immediately upon notice to the STATE, or at such later date as the CCT may establish in such notice, upon the occurrence of any of the following events:(a) If the STATE fails to provide services as called for by this Agreement.

(b) If the STATE fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from CCT fails to correct such failures within 10 days or such longer period as CCT may authorize.

(c) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this Agreement is prohibited.

7.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. Further, CCT shall be responsible for all costs incurred up to the date of termination.

8. AMENDMENT

8.1 Either PARTY may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

CONFEDERATED TRIBES OF THE
COLVILLE INDIAN RESERVATION

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By: Daniel L. Brubend

By: [Signature]

Name: DANIEL L. BRUBEND LT

Name Keith A. Metcalf, P.E.

Title ~~Executive Director~~ LAND & PROP
DIRECTOR

Title Region Administrator

Date: 2/11/09

Date: 2/12/09

APPROVED AS TO FORM FOR TRIBE

APPROVED AS TO FORM FOR WSDOT

By: Tribe Declined

By: [Signature]
Assistant Attorney General

Date: _____

Date: 12-31-08

AGREEMENT No. GCA 5939

Exhibit "A" Cost Estimate

Staffing and Project Management

Greg Lahti P.E., Eastern Region Hydraulics Section Manager, WSDOT Eastern Region
 Wayne Cornwall, Hydraulics Engineer, WSDOT Eastern Region
 Karen Zirkle, Chronic Environmental Deficiency Coordinator, WSDOT Environmental Services Office

Task	Start	Finish	Staff	Rate	Hours	Cost
1. <u>Background Data Collection</u> – Designation of site and reach boundaries;	11/2/2007	11/15/2008	Lahti	\$56.29	8	\$450.32
			Cornwall	\$47.13	32	\$1,508.16
2. <u>Site visits</u> – Survey of effected reach and ground truthing GIS data	11/12/2008	11/14/2008	Lahti	\$56.29	20	\$1,125.80
			Cornwall	\$47.13	20	\$942.60
3. <u>GIS / air photo analysis</u> – Delineation of geomorphic features.	11/2/2008	12/12/2008	Cornwall	\$47.13	30	\$1,413.90
4. <u>Reach Assessment</u> – Characterize watershed conditions, hydrology,	11/15/2008	12/20/2009	Lahti	\$56.29	20	\$1,125.80
			Cornwall	\$47.13	40	\$1,885.20
5. <u>Alternatives Analysis</u> – Develop alternatives and analyze risks and benefits of each	12/1/2009	1/9/2009	Lahti	\$56.29	18	\$1,013.22
			Cornwall	\$47.13	30	\$1,413.90
6. <u>Report</u> – Compile site and reach assessment / evaluation of treatment alternatives report	1/5/2009	1/30/2009	Lahti	\$56.29	20	\$1,125.80
			Cornwall	\$47.13	60	\$2,827.80
TOTAL					298	\$14,832.50

GCA 5939

EXHIBIT "B"

Scope of Work

Background

Recurrent sediment buildup in stream channel causing constant flooding and maintenance by both local landowner and WSDOT personnel. Also culvert does not meet Fish Passage Standards.

Important Factors

The Confederated Tribes of the Colville Indian Reservation have identified this location as a priority for re-establishing fish habitat.

Preliminary Mechanism of Failure

Maintenance has reported problems in 15 of the last 25 years due to overtopping of banks upstream of the culvert. The preliminary primary mechanism of failure has been identified as sediment transport into the reach and culvert does not allow Fish Passage and may be undersized. Our site visits and the results of our reach analysis may identify a different mechanism of failure, requiring a different analysis.

Potential Alternatives

Based on the mechanisms of failure that were preliminarily identified, we have identified certain techniques as alternative solutions. Please be aware that if we identify a different mechanism of failure there may be a revised list of alternatives. Under the currently identified mechanism of failure we expect to analyze the use of the following techniques:

- Drop Structures
- Porous Weirs
- Woody Plantings
- Herbaceous Cover
- Soil Reinforcement
- Coir Logs
- Bank Reshaping
- Floodplain Roughness
- Floodplain Grade Control
- Spawning-Habitat Restoration
- Off-Channel Spawning and Rearing Habitat
- Channel Modifications
- Replace culvert with new Culvert meeting current Fish Passage standards

Deliverables

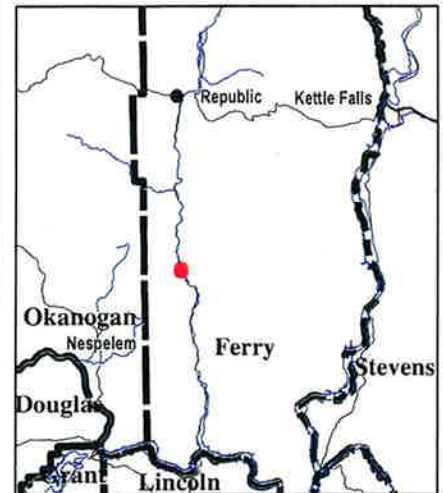
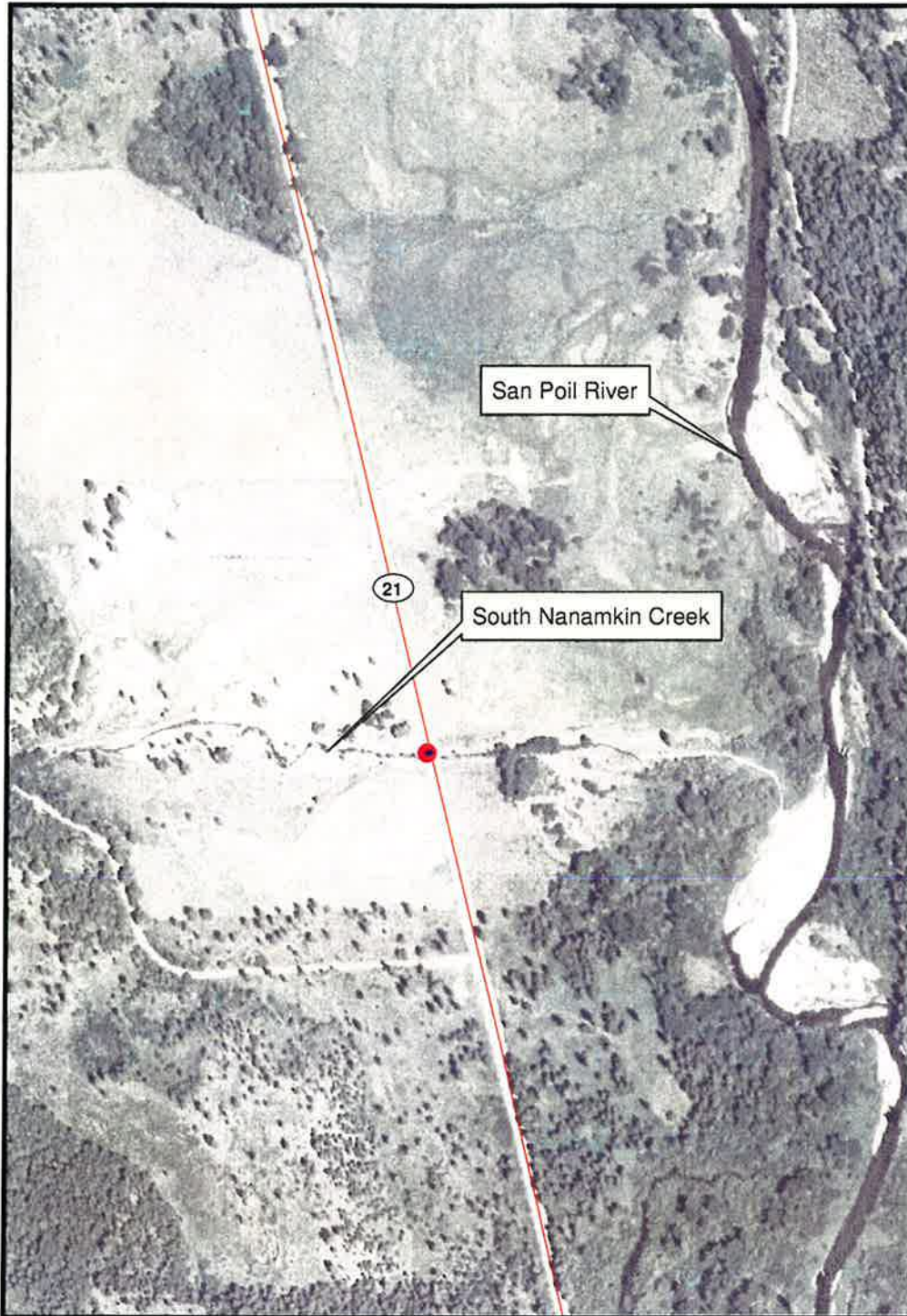
1. A site and reach assessment/evaluation report, with treatment alternatives.
2. Design Team participation will be scoped separately once alternatives are identified.

Staffing and Project Management

Greg Lahti P.E., Eastern Region Hydraulics Section Manager, WSDOT Eastern Region

Wayne Cornwall, Hydraulics Engineer, WSDOT Eastern Region

Karen Zirkle, Chronic Environmental Deficiency Coordinator, WSDOT Environmental Services Office



South Nanamkin Creek Chronic Environmental Deficiencies/Fish Passage

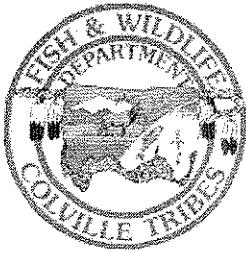
Data Source: State Routes and County Boundaries from WSDOT at scale of 1:500K.

Disclaimer? Produced by? Perhaps more data information.

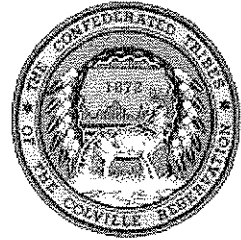
SR 21 Mp 133.6



GCA 5939
EXHIBIT C
Vicinity Map



Colville Confederated Tribes
Fish and Wildlife Department
MEMORANDUM



November 19, 2008

Darryl Rateliff
Eastern Region Agreements Engineer
Washington State Department of Transportation
2714 North Mayfair Street
Spokane, WA 99207-2090

Re: GCA 5939 South Nanamkin Creek- Reach Assessment

Dear Mr. Rateliff:

Please find attached excerpts from our Purchasing Operations manual that describe the authority of personnel authorized at various spending levels between the Tribe and vendors/agencies. You requested copies of resolution that gives authority for person(s) authorized to sign a Work Agreement between WSDOT and the Colville Tribes. It is my understanding that the cost of services for the South Nanamkin Creek-Reach assessment is approximately \$14,850, which falls under the authority of our Executive Director.

Sheri Sears will still be the Project Manager/ Owner's Representative for the Tribe for the purposes of correspondence and all technical related questions and coordination between work in the field.

Again, thank you for your assistance. Please call me if you have any questions or require any additional information at (509) 634-2137.

Sincerely,

Josh Hall
Fish Biologist I

All items to be attached to the Vendor and copy to the Contract Office.

CONTRACT DOCUMENTATION AND REVIEW CHECKLIST

Before submitting your contract check to ensure that you have attached the required documents to avoid having the document returned to the submitting program without further review.

- **Top Section:** Fill out the Line, Fund Source, CBC Committee, Fund Number, Company Number, Contract Amount, Accounting Program, Department, Users, Match, and Job, and indirect billings.
- **Summary of Contract Contents:** Brief detailed description of services or work to be performed.
- **Review and Approval:** Program Manager and Department Administrator's signature and date prior to submitting to the review team. The review team will review contract document and all attachments.
- **Commitments for review:** You are not allowed to add or subtract program or detail or work items, or to make requests. If everything is correct you may proceed to the next step and forward on to the Executive Director for his signature. Contract review program for "CBC Committee" for approval.
- **Review Approval:**
 - Up to \$30,000 Executive Director's signature will be obtained by CO.
 - Over \$30,000 Council approval will be required. The CO will contact the submitting program to deliver the contract review packet to the appropriate committee for approval.
- **Approved Finalized Contract:** After obtaining appropriate tribal and agency signatures contract number will be issued.
- **Original Contract Document:** The original contract is to be returned to the Contract Office.

Requirements for Purchase Order: Attach a responsibility to obtain purchase order number for the total dollar amount. This will enable the program to track the contract amount and payments in a more efficient manner. Also attach a copy of the Contract Signature Page to verify contract review.

3. **TERO COMPLIANCE and UTILIZATION PLAN**

Document to provide TERO with information on the Project and their employees. TERO is the program that sends out the notices to proceed. TERO Assessment fee of 2% may apply for non-certified companies.

4. **PUBLIC WORKS DISPOSAL and UTILIZATION PLAN**

Document to provide Public Works with information on the Project and the disposal process and fee if needed.

Agreement GCA 5939

Exhibit D

Page 2 of 2