

COOPERATIVE AGREEMENT  
BETWEEN  
COLUMBIA SPRINGS  
AND  
CLARK PUBLIC UTILITIES

WHEREAS, the Washington Department of Fish & Wildlife ("WDFW") has recently entered into a management agreement with Columbia Springs (the "WDFW Management Agreement"), whereby Columbia Springs has agreed to co-manage the Vancouver Fish Hatchery (the "Hatchery") with WDFW on behalf of the citizens of the State of Washington; and

WHEREAS, the Hatchery currently raises trout and other species of fish; and

WHEREAS, Clark Public Utilities (the "Utility") operates a water utility whose activities may impact the water quality of surrounding waterways in Clark County, Washington; and

WHEREAS, the Utility has implemented various environmental enhancement programs to minimize or offset this impact; and

WHEREAS, one of the Utility's environmental enhancement programs consists of funding part of the ongoing operations of the Hatchery; and

WHEREAS, the Washington Department of Fish and Wildlife has previously indicated that it would close the Hatchery without direct financial support; and

WHEREAS, in 1996 the Utility committed to fund Hatchery operations pursuant to an agreement with WDFW (the "WDFW Agreement"), which is scheduled to expire on June 30, 2016; and

WHEREAS, WDFW has agreed to terminate the WDFW Agreement early; and

WHEREAS, in 2005, Columbia Springs and the Utility had previously drafted an alternate Cooperative Agreement, which was never implemented; and

WHEREAS, under this new Agreement, the Utility will continue to fund a portion of the Hatchery operations by making semi-annual payments directly to Columbia Springs.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Scope

The Utility agrees to make semi-annual payments to Columbia Springs to support the continued operation of the Hatchery. The total amount of these payments shall be determined by the Utility on an annual basis and such funds shall be used exclusively for the purposes outlined in this Agreement.

## 2. Term

This Agreement shall become effective immediately and continue until it is terminated pursuant to Section 5. However, the Utility's obligation to provide funding to Columbia Springs under this Agreement shall become effective beginning with the budget year 2016.

## 3. Funding Level

The Utility's annual funding commitment for the Hatchery shall be determined by the Utility's Board of Commissioners (the "Utility Board"), in the preceding year, as part of the Utility's internal budget review process.

As part of the Utility Board's funding review, Columbia Springs shall submit a proposed annual Hatchery budget to the Utility by August 1<sup>st</sup> for the following year's expenses. The Utility shall complete its review of the Hatchery budget by December 1<sup>st</sup>, and at which time it will notify Columbia Springs whether the Hatchery budget is accepted or requires revision.

The Utility shall remit 50% percent of the approved funding amount to Columbia Springs bi-annually (on January 1<sup>st</sup> and July 1<sup>st</sup>) for the applicable year.

In addition, Columbia Springs shall use its best efforts to locate and acquire additional funding for the operation of the Hatchery in order to offset the Utility's annual funding commitment. The amount of any additional funding obtained by Columbia Springs through such efforts shall be reported to the Utility's Board as part of the annual budget review process.

## 4. Use of Funds

All funds allocated under this Agreement shall be used for the purpose of operating and maintaining the Hatchery facilities and grounds. These funds shall not be used for any other purpose, unless the Utility's Board authorizes Columbia Springs to use them for non-Hatchery purposes by its approval of a particular year's Hatchery budget. Columbia Springs shall clearly identify any item in the Hatchery budget that is not directly connected with the operation of the Hatchery.

At the end of each quarter, Columbia Springs shall provide a written report to the Utility detailing any expenditures it made during that period that are covered under this

Agreement.

#### 5. Termination

Columbia Springs may terminate this Agreement at any time with 90-day's written notice to the Utility.

If the Utility elects to terminate this Agreement, the Utility shall send notice of termination to Columbia Springs and such termination shall become effective one (1) year after such notice.

In the event that the Management Agreement between WDFW and Columbia Springs is terminated, this Agreement shall also terminate on the date that the Management Agreement termination becomes effective.

In the event of termination, any funds that are not expended by Columbia Springs for Hatchery operations shall be returned to the Utility within 30 days of the effective date of termination of this Agreement.

#### 6. WDFW Agreement

The Utility's funding obligation under this Agreement is contingent upon the termination of the WDFW Agreement by WDFW on or before December 31, 2015.

#### 7. Record Retention

Columbia Springs shall retain all records (including itemized receipts) pertaining to the operation of the Hatchery for a period of six years from the date such records are created.

#### 8. Audit

The Utility may review, copy, and audit any records in Columbia Springs' possession pertaining to this Agreement by giving them 30-days advanced notice.

#### 9. Board Position

During the term of this Agreement, the Utility shall have a position on Columbia Springs' Board of Directors.

#### 10. Notices

Any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient party at the following address:

If to Columbia Springs:

Columbia Springs  
Attn: Executive Director  
12208 SE Evergreen Hwy  
Vancouver, WA 98683

If to the Utility:

Clark Public Utilities  
Attn: Legal Department  
P.O. Box 8900  
Vancouver, Washington 98668

#### 11. Operational Responsibilities and Indemnity

The Utility shall not be responsible for any operational activities of the Hatchery.

Columbia Springs shall indemnify and hold the Utility harmless from any claims arising from the operation of the Hatchery, including, but not limited to, any claims for personal injury or property damage, fines, penalties, or any liability associated with historic, present, or future hazardous material spills and/or contamination related to the operation of the Hatchery or the Hatchery site.

IN ADDITION, FOR PURPOSES OF INDEMNIFICATION ONLY, COLUMBIA SPRINGS SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED THEM UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT (TITLE 51 RCW). COLUMBIA SPRINGS' WAIVER OF IMMUNITY HEREIN DOES NOT EXTEND TO CLAIMS BY EMPLOYEES OF COLUMBIA SPRINGS MADE DIRECTLY AGAINST THEIR EMPLOYER.

#### 12. Relationship of the Parties

Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent between the Utility and Columbia Springs.

#### 13. Assignment

This Agreement shall not be assigned to third-parties without the written consent of the Utility.

#### 14. Non-waiver

The failure of the Utility to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment to any future enforcement of such contractual term.

15. Disputes

Any dispute relating to this Agreement, which is not resolved by the Parties, shall be decided by litigation in a court of competent jurisdiction upon the filing of a legal action by the aggrieved party. It is further agreed that litigation shall be limited and confined exclusively to the appropriate state court located within the State of Washington. Venue shall be in Clark County. Furthermore, this Agreement shall be governed in accordance with the laws of the State of Washington.

16. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed, in all respects, as if such invalid or unenforceable provisions were omitted.

17. Survival

The following Sections of this Agreement shall survive termination: Section 7 (Record Retention), Section 8 (Audit), Section 11 (Operational Responsibilities and Indemnity), and Section 15 (Disputes).

18. Entire Agreement

The Parties understand and agree that this document constitutes the entire understanding between the Parties regarding this subject matter, and that this Agreement supersedes all other prior agreements and understandings, whether oral or written. Any prior agreement in effect between the Parties regarding this subject matter is hereby terminated effective upon the execution of this Agreement. This Agreement shall not be modified or amended, except in writing, signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this contract at Vancouver, Washington, this 18 day of ~~April~~ May, 2015.

Columbia Springs

Clark Public Utilities

Heidi M. Johnson Bixby 5-18-15  
Signature Date

Doug Quinn 4-23-15  
Signature Date

Heidi M. Johnson Bixby, Chair  
Printed Name and Title

DOUG QUINN, DIRECTOR OF WATER SERVICES  
Printed Name and Title