SERVICES/INDEPENDENT CONTRACTOR AGREEMENT

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION
SA No. 14-014

1. PARTIES
Public Utility District No. 1 of Chelan County, Washington (hereinafter "District") has retained Confederated Tribes of the Colville Reservation, (hereinafter "Contractor") a federally recognized Indian tribe in the State of Washington, to perform services for the District pursuant to the following terms and conditions of this Services/Independent Contractor Agreement ("Agreement").

2. DEFINITIONS
Acceptance: Notice from District to Contractor that a Deliverable or Service has been completed in accordance with this Agreement.
Deficient or Deficiency: A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications, documentation or this Agreement to the District's satisfaction.
Deliverables: Contractor's products which result from the Services and which are prepared for District (either independently or in concert with District or third parties) during the course of Contractor's performance under this Agreement.
Specifications: The technical and other written specifications, directions and Deliverables that define the requirements between District and the Contractor.

3. SCOPE OF SERVICES AND DELIVERABLES
The Services to be performed and the Deliverables to be provided by the Contractor are described in the Scope of Services attached as Exhibit A and by this reference herein incorporated. District shall have the right to review and test the Deliverables following Contractor's delivery of each to District to determine whether the Deliverables conform to the requirements of the Agreement and to District's satisfaction. The District may either: reject a Deliverable if it is Deficient or contains a Deficiency, or Accept each Deliverable ("Acceptance"). If the District rejects the Deliverables, Contractor shall, at District's request, promptly correct all such Deficiencies and, thereafter, District shall again have the opportunity to review and test the Deliverables. If Contractor is not able to correct all Deficiencies in the Deliverables within 30 days following their receipt by District, District shall have the right to terminate this Agreement, which termination shall be deemed due to Contractor's default.

4. PAYMENT
Unless otherwise agreed and set forth in any exhibits hereto, the District will pay the Contractor monthly for undisputed amounts based on Services performed in accordance with the terms of this Agreement and as itemized on a correct written invoice to the District, as verified by the District Project Leader. All correspondence and invoices should be plainly marked with the SA number referenced above. Invoices may be delivered or mailed to Public Utility District No. 1 of Chelan County, 327 N. Wenatchee Ave., P. O. Box 1231, Wenatchee, WA 98807. Contractor shall bill the District on a monthly basis with net payment due thirty (30) days from the date that the correct invoice is received by the District. However, in no event shall the total amount of compensation to be paid by the District for said services, including all fees and costs incurred by the Contractor in the performance of this Agreement, exceed the amount authorized by the
District. If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor’s obligations hereunder, District shall have the right to withhold any and all payments due hereunder to Contractor, without work stoppage by Contractor, until such failure to perform is cured.

A rate schedule is included in Exhibit A. The same may be modified only in writing executed by both parties. The Contractor shall charge only reasonable expenses. For example, air travel shall be coach fare only. If the Contractor charges for the use of equipment, computers or other items, the same must be included and agreed upon in advance in Exhibit A.

5. RELATIONSHIP OF PARTIES
The parties intend that an independent contractor relationship will be created by this Agreement. The conduct and control of the Services and safety measures required by the Services lies solely with the Contractor. The Contractor is not to be considered an agent or employee of the District for any purpose and the Contractor is not entitled to any of the benefits that the District provides for the District’s employees. It is understood that the Contractor is free to contract for similar services to be performed for other parties while it is under contract with the District, provided that any services for others does not prevent the Contractor from fulfilling all the Contractor’s obligations pursuant to this Agreement.

Contractor, as an independent contractor, understands and acknowledges that it is not entitled and does not desire to be covered by any payroll taxes or other fringe benefits. Contractor agrees to pay its own social security taxes, income taxes and other health insurance benefits.

6. DURATION AND TERMINATION
The Agreement shall be terminated by any of the following events: (a) death or dissolution of the Contractor, (b) failure by Contractor to comply with any applicable laws or District policies (c) mutual agreement of the parties, (d) District giving the Contractor not less than fifteen (15) days written notice of termination, (e) failure of Contractor to cure any material breach within seven (7) days of receipt of written notice from the District. The District may at any time stop performance of Services without terminating the Agreement. Otherwise, this Agreement shall remain in force until the Services contemplated hereunder are completed to the satisfaction of the District.

7. INDEMNITY
The Contractor covenants and agrees that it will indemnify and hold harmless the District and any and all of the District’s officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property, to which the District or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default under the Agreement on the part of the Contractor or any subcontractor or any of the Contractor’s or subcontractor’s officers, principals, agents or employees. With regard to any claim based on the concurrent negligence of the indemnitor, their agent or employee, and the indemnitee, the indemnitor’s liability under this section shall apply to the full extent of the negligence of the indemnitor, their agent or employee. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of the Contractor or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING
THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO THE DISTRICT.

8. CONDITIONS OF SERVICES AND NON-INTERFERENCE
The Contractor has informed itself fully of all conditions relating to the Services to be provided. Insofar as possible the Contractor must employ such methods or means as will not cause any interruption of or interference with the work of the District or any other contractor.

9. INSURANCE
The Contractor shall, at its own expense, provide for the payment of workers compensation benefits to employees employed on or in connection with the Services covered by this Agreement, in accordance with the laws of the state in which the services are to be done. The Contractor shall also, at its own expense, provide for minimum insurance coverage as follows: general liability in the amount of $1,000,000, employer’s liability in the amount of $1,000,000. This insurance shall be in effect prior to performing any Services under this Agreement and shall remain in effect for the duration of the Services covered by the Agreement. Additional insurance requirements or conditions may be added by amendment and the District, at its discretion, may require Contractor to provide evidence of such insurance. These insurance requirements shall not be deemed to limit the Contractor’s liability to the District or any third party.

10. STANDARD OF PERFORMANCE
Contractor will perform the Services with the level of skill, care and diligence normally provided by and expected of persons performing services similar to and like those to be performed pursuant to this Agreement. Contractor understands and acknowledges that the District will be relying upon the accuracy, competence and credibility and the completeness of the Services to be provided hereunder. All personnel shall be fully qualified and authorized to perform the Services.

11. WORK PRODUCT
All data, designs, drawings, calculations, information obtained, materials information and the results of all Services performed by Contractor hereunder shall be considered work for hire and shall become the property of the District upon completion of the Services provided and shall be delivered to the District prior to final payment.

12. COPYRIGHT
No reports, maps, plans, specifications or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor, or shall be deemed to be copyrighted by virtue of preparation by an engineer or architect or by virtue of any placement of a professional stamp on such reports, maps, plans, specifications or other documents, including but not limited to engineers’ and architects’ stamps unless the information is proprietary cultural information generated by, for, or from the Contractor and is so marked as “proprietary.”

13. DISCLOSURE OF CONFIDENTIAL INFORMATION
Contractor shall not divulge to any third parties any information, which is not otherwise publicly available, obtained from or through the District or developed hereunder without first obtaining
approval from the District or its designated representative. Contractor shall supply all Deliverables provided hereunder in draft report form to the District for review and comment before any reports are finalized or distributed to any third Parties. The parties have executed a Confidentiality Agreement, and it is attached hereto as Exhibit B and the terms are incorporated into this Agreement by this reference.

14. SAFETY
The Contractor and any subcontractors shall take all safety precautions necessary for the prevention of accidents, and shall, at a minimum, comply with all laws and regulations with regard to this matter.

15. ASSIGNMENT/SUBCONTRACT
The Contractor shall not assign this Agreement or any part thereof or subcontract any services without the advanced written approval of the District.

16. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, RULES AND DISTRICT POLICIES
Contractor shall comply with all applicable federal, state and local laws and regulations, all of which are deemed to be incorporated into this Contract as if fully set forth. Additionally, Contractor shall comply with the District’s Security policies and Violence in the Workplace policy, copies of which will be provided to Contractor upon request.

17. APPLICABLE LAW AND ATTORNEY FEES
In the event that litigation or other proceedings arise in relation to this Agreement, the substantially prevailing Party shall be entitled to recover all costs of suit and collection, including, but not limited to, reasonable attorney fees. Nothing herein may be construed in any way to waive the inherent sovereign immunity of the Confederated Tribes of the Colville Reservation.

18. ENTIRE AGREEMENT
This instrument and any exhibits hereto contain the entire and final Agreement of the Parties.

19 WAIVER OF BREACH
The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other party.

20. NOTICES
Any notices shall be effective as personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

Chelan County PUD
Attn: Jennifer Burns
P. O. Box 1231
327 N. Wenatchee Avenue
Wenatchee, WA 98807
Phone: (509) 661-4474
Fax: (509) 661-8203

Confederated Tribes of the Colville Reservation
Attn: Guy Moura
PO Box 150
Nespelem, WA 99155
Phone: (509) 634-2695
Fax: (509) 634-2694
21. AUTHORIZED SIGNATURES
Each individual executing this Agreement warrants he/she is fully authorized to bind his/her principal to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the 16th day of December 2013.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

By ______________________________
Jennifer Burns
Environmental Coordinator

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

By ______________________________
Michael O. Finley
Colville Business Council Chairman
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION
SA NO. 14-014

EXHIBIT A - SCOPE OF SERVICES, RATES AND PROJECT LEADERS

The Contractor executed Services/Independent Contractor Agreement dated the 16th day of December, 2013. Pursuant to the Agreement, the Contractor agrees to perform the Services described below at the hourly rates or price set forth below:

1. PROJECT DESCRIPTION.
   The Contractor agrees to perform the following Services:
   
   a. Services on the project shall begin on January 1, 2014, and the project shall be completed on December 31, 2014.
   
   b. The project to be performed and the Deliverables to be delivered are described as follows: As requested by the District, the Contractor shall provide technical expertise to the District for review of cultural resource documents and activities including, but not limited to, site survey reports, monitoring reports, and treatment plans.

2. BILLING RATES.
   a. The total amount of compensation to be paid by the District for said Services shall not exceed $10,000 (inclusive of all fees and costs incurred by the Contractor in the performance of this Agreement).
   
   Contractor shall submit detailed invoices, including, a description of the document/cultural review and hours worked on each project. If the invoice is incomplete, the District will withhold payment until the Contractor has submitted a correct invoice with the required detail.
   
   b. All undisputed and correct Contractor invoices shall be submitted to the District no later than January 5, 2015.

3. PROJECT LEADERS.
   The District’s Project Leader is Jennifer Burns, who may be reached by phone at (509) 661-4474, by fax at (509) 661-8203, and by email at jennifer.burns@chelanpud.org.

   The Contractor’s Project Leader is Guy Moura, who may be reached by phone at (509) 634-2695, fax at (509) 634-2694, and by email at guy.moura@colvilletribes.com.
EXHIBIT B
CONFIDENTIALITY AGREEMENT
SA 14-014

THIS AGREEMENT is made and entered into as of 16th day of December 2013 by and between Public Utility District No. of Chelan County ("District") and the Confederated Tribes of the Colville Reservation ("Contractor").

WHEREAS, the parties have agreed to disclose to one another detailed financial, commercial or technical information and data in written or other recorded form not otherwise publicly available ("Confidential Information") for the purpose of implementing the Professional Service Contract between the parties; and

WHEREAS, the release or misuse of the Confidential Information could be detrimental to the District and the District is entitled to assurances that such information will be disclosed and used only for purposes of this Agreement and accomplishment of the purposes of the Professional Service Contract between the parties; and

WHEREAS the District is willing and able to provide the Confidential Information under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the undertakings as set forth in this Agreement, the parties hereto agree as follows:

1. For purposes of this Agreement, the Contractor shall be defined as "Recipient" relative to receipt of Confidential Information from the District (the "Disclosing Party").

2. Recipient shall not, without the prior written authorization of the Disclosing Party, utilize any Confidential Information for any purpose whatever except as stated herein. Recipient shall not communicate to third parties any Confidential Information without the prior written authorization of the Disclosing Party and Recipient will not utilize any Confidential Information to the technical or economic disadvantage of the Disclosing Party.

3. Confidential Information shall be disseminated within Recipient's organization (including affiliated companies) only to those who have a "need to know."

4. All Confidential Information shall be marked as such. Either a "Confidential" stamp shall be applied or written instructions shall accompany the transmittal of any Confidential Information.

5. Recipient shall afford Confidential Information the same security and care in handling and storage as Recipient provides for its own similar confidential information.
6. All Confidential Information shall be retained by the parties subject to the terms of confidentiality specified herein; provided that any Confidential Information disclosed by the Disclosing Party shall remain the property of the Disclosing Party and, upon the request of the Disclosing Party, all Confidential Information in written or other recorded form shall be returned to the Disclosing Party.

7. The obligations of Recipient shall not apply with respect to any specific portion of the Confidential Information, when such Confidential Information:

(a) is known to Recipient prior to receipt and such knowledge is documented in Recipient’s records;

(b) is lawfully received from a third party without restriction imposed by or for the benefit of the Disclosing Party and without breach of this Agreement;

(c) is now, or subsequently becomes, generally available to the public by publication or otherwise through no act or wrongful failure to act on the part of Recipient;

(d) is subject to a prior written approval of the Disclosing Party for its disclosure or use by the Recipient;

(e) is subject to a court order or other governmental requirement for disclosure or production, only after Recipient has first given Disclosing Party the opportunity to object to such order or requirement; or

(f) is independently developed by Recipient without benefit of the Confidential Information.

8. Any waiver of any part of this Agreement shall not constitute a waiver of any other part; nor shall a waiver of any breach of this Agreement constitute a waiver of any succeeding breach.

9. Nothing in this Agreement shall be construed as Disclosing Party having granted any rights, either express or implied, under any patents or any rights, either express or implied, in any data or know-how, to Recipient.

10. This Agreement constitutes the entire agreement and understanding between the parties with respect to the furnishing of proprietary or confidential information in connection with the Project, and all prior discussions, negotiations and understandings are superseded.
11. No amendment of this Agreement shall be valid or of any force or effect unless reduced to writing and signed by a duly authorized representative of both parties.

12. Either party may terminate this Agreement at any time by written notice (mailed, hand delivered, or delivered by fax) to the other party. Such termination is effective upon receipt; provided, however, that in the event of such termination the provisions of this Agreement shall continue to apply with full force and effect for a period of ten (10) years from such termination to all Confidential Information furnished prior to the date of termination.

13. Nothing herein shall prevent Contractor from disclosing to the Board of Commissioners, independent auditor or other proper authority, information which indicates illegal or unlawful activity has occurred or will occur.

14. Because of the unique nature of the information to be provided, the undersigned understands and agrees that irreparable harm will be suffered in the event that the undersigned fails to comply with any of the obligations above and that monetary damages will be inadequate to compensate for such breach. Accordingly, the undersigned agrees that the District will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement.

15. If legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and necessary disbursements, in addition to any other relief granted.

THIS AGREEMENT has been executed by a duly authorized representative of each party as of the day first written above.

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

By: Michael O. Finley
Title: Colville Business Council Chairman

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

By: Jennifer Burns
Title: Environmental Coordinator