

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

This **AGREEMENT** is between the Port of Willapa Harbor ("PORT"), a political subdivision of the State of Washington, and Pacific County ("PACIFIC COUNTY"), a political subdivision of the State of Washington.

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended and codified in Chapter 39.34 of the Revised Code of Washington provides for interlocal cooperation between governmental agencies; and

WHEREAS, Chapter 39.33 of the Revised Code of Washington provides for the intergovernmental disposition of property; and Chapter 39.34 of the Revised Code of Washington provides for intergovernmental services; and

WHEREAS, both parties are limited in funds and agree to share resources where mutually agreed.

NOW THEREFORE, the parties agree as follows:

1. **Purpose.** The purpose of this AGREEMENT is to provide joint sharing in the acquisition of equipment, supplies and series; and allowing the disposal of equipment by one agency for another. PACIFIC COUNTY will perform through the Road Division of the PACIFIC COUNTY Public Works Department, the following work at a time and in a convenient manner: construction, repair or maintenance of the streets, bridges, drainage facilities, sidewalks, curbing, traffic control devices, and further miscellaneous services including engineering, GIS analysis, and right of way services on an individual basis. Upon written request made upon a form ("Work Task Request") supplied by requesting party, the performing party agrees to perform work requested, reserving however, the right to deny or approve each request on an individual basis. Performing party will be reimbursed for the costs of the work performed and its workers, based on the actual cost of labor, equipment rental, and materials used in the construction, repair, or maintenance work involved, including costs for overhead, indirect costs, and fringe benefits to labor. Performing party shall submit a statement of the costs incurred in performance of the work to requesting party, and within thirty (30) days thereafter the requesting party shall pay the performing party the amount of the statement.
2. **Administration.** No new or separate legal or administrative entity is created to administer the provisions of the AGREEMENT. This AGREEMENT shall be administered by PORT and PACIFIC COUNTY.
3. **Scope.** The PORT, in contracting for the purpose of goods and services for itself, agrees to so contract also on behalf of PACIFIC COUNTY, to the extent permitted by law and agreed upon between the parties. Likewise, PACIFIC COUNTY, in contracting for the purchase of goods and services for itself, agrees to so contract also on behalf of the PORT, to the extent permitted by law and agreed upon between both parties.

4. Duration of Agreement - Termination. This AGREEMENT shall remain in force until December 31, 2032, PROVIDED, that the agreement may be terminated by either party by giving ten (10) day written notice to the other, PROVIDED, that termination shall not affect or impair joint purchases of the parties that are agreed to on or before the date of termination.
5. Right to Contract Independent Action Preserved. Each party shall have the right to contract independently for the purchase of any goods or services. Each party shall also have the right to exclude the other party from particular purchases, for any reason, whether with or without notice to the other party. PROVIDED, that nothing in this paragraph shall impair existing or agreed upon future joint purchases of the parties.
6. Compliance with Legal Requirements. In making purchase contracts hereunder, the contracting party shall comply fully with the legal requirements applicable to its purchase.
7. Financing. Whenever either party desires to make purchases under a contract entered into by the other party, it shall timely provide the other party with all necessary descriptions, specifications, and other relevant information. The party whose purchases are included in contracts entered into by the other party shall likewise make timely payment therefore. Each party accepts no responsibility for the payment or acquisition price of equipment or services intended for use by the other party.
8. Acquisition, Ownership, and Disposition of Property. All purchases by either party pursuant to the terms of this AGREEMENT shall be the property of the purchaser and held or disposed of by the sole discretion of the purchaser. For purposes of this section, "purchaser" means the party contracting with a third party to acquire particular goods or services, PROVIDED, that if the party contracting with the vendor accepts full payment from the other party for the goods or services in question, such other party becomes the "purchaser" of those goods or services. Any property jointly purchased shall be held or disposed of by the party in possession subject to reimbursement of any portion of its cost contributed by the other party of this AGREEMENT.
9. Filing. Executed copies of the AGREEMENT shall be filed as required by Section 39.34.040 of the Revised Code of Washington prior to this AGREEMENT becoming effective.
10. Interlocal Cooperation Disclosure. Each party may insert in its solicitations for equipment a provision that other authorized government agencies may also wish to procure the equipment being offered to the party and allowing the bidder the option of extending its bid to other agencies at the same bid price, terms and conditions.
11. Non-Delegation/Non-Assignment. Neither party may delegate the performance of any contractual obligation, to a third party, unless mutually agreed in writing. Neither party may assign this AGREEMENT without the written consent of the other party. Neither party shall be responsible to the other for the performance or non-performance of contracts by vendors.
12. Severability. Any provision of this AGREEMENT, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidation the remaining provisions or affecting the validity or enforcement of such provisions.

13. Indemnification by Parties. To the fullest extent permitted by law, the PORT agrees to indemnify, defend and hold PACIFIC COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) arising in connection with performance of this AGREEMENT, which are caused in whole or in part by any action or omission, negligent or otherwise, of the PORT, its employees, agents or volunteers or the PORT's subcontractors and their employees, agents or volunteers.

To the fullest extent permitted by law, PACIFIC COUNTY agrees to indemnify, defend and hold the PORT and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) arising in connection with performance of this AGREEMENT which are caused in whole or in part by any action or omission, negligent or otherwise, of PACIFIC COUNTY, its employees, agents or volunteers or PACIFIC COUNTY's subcontractors and their employees, agents or volunteers.

This indemnification obligation of one party shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the other party. This indemnification obligation of the parties shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the PARTIES hereby expressly waive any immunity afforded by such acts, as respects the other party only. The foregoing indemnification obligations of the PARTIES are a material inducement to join in this AGREEMENT and have been mutually negotiated by the parties.

14. Participation Parties-No Waiver. The PARTIES reserve the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of the PARTIES' indemnity obligations under the Contract.
15. Survival of Contractor's Indemnity Obligations. The PARTIES agree that all mutual indemnity obligations shall survive the completion, expiration or termination of this AGREEMENT.
16. Insurance. Each party shall obtain and maintain insurance coverage from a solvent insurance provider, solvent insurance pool or self-insurance program that is sufficient to address and cover the duties, responsibilities and obligations of this AGREEMENT. Upon request, a party shall provide evidence of insurance coverage, in the form of a certificate of insurance from an insurance provider or a letter confirming coverage from an insurance pool or self-insurance program.

17. Entire agreement. This AGREEMENT contains the entire written agreement of the parties and supersedes all prior discussions. This AGREEMENT may be amended only in writing, signed by both parties.
18. No third-party rights. This AGREEMENT is solely for the benefit of the parties and gives no right to any other party or person.
19. Jurisdiction and venue. This AGREEMENT shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of Pacific County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this AGREEMENT.
20. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this _____ day of _____ 2022.

THE PORT OF WILLAPA HARBOR

James P. Sayre | 8/16/22
Manager | Date

ATTEST

Dawn E. King | 8/16/22
Port Auditor | Date

PACIFIC COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

Lisa Olsen, Chair

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

ATTEST

Amanda Bennett Date
Clerk of the Board

APPROVED AS TO FORM

Prosecutor's Office WSBA#