

INTERGOVERNMENTAL AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between the Port of Longview, hereinafter referred to as the "Port," a municipal corporation under the laws of the State of Washington, and Cowlitz County, through the Cowlitz County Corrections Department, hereinafter referred to as the "County," a political subdivision of the State of Washington and jointly referred to as "the Parties."

RECITALS

WHEREAS, RCW § 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage; and

WHEREAS, RCW § 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; PROVIDED, That such contract shall be authorized by the governing body of each party to the contract; and PROVIDED FURTHER, That such contract sets forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties;

WHEREAS, the Parties each have authority to maintain public lands and, in this case, have a shared interest in utilizing the Cowlitz County Work Crew to furnish weed control, planting, and ancillary services annually to the Port of Longview Willow Grove Mitigation site located at the intersection of Willow Grove Road and Barlow Point Road; and

WHEREAS, the Parties agree that utilizing the Cowlitz County Work Crew for weed control, planting, and ancillary services provides a mutual benefit to the Parties.

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1 The County agrees to furnish the following weed control and ancillary services annually to the Port at the Willow Grove Mitigation site. Services to be performed as needed include but are not limited to:
- 1.1.1 Remove unwanted or invasive weeds from the project site; and
 - 1.1.2 Plant native species to enhance the area; and
 - 1.1.3 Perform other duties at the request of the project manager (Port of Longview) or assignee with approval of the Work Crew Supervisor; and
 - 1.1.4 The County is solely responsible for supervising the Work Crew and must personally supervise the Work Crew at all times while the Work Crew is on the Willow Grove Mitigation Site.

2. SCHEDULE

- 2.1 Services to the Port shall be performed within the month scheduled on a time-available basis. The Port of Longview acknowledges that Cowlitz County has first call on the services of its Offender Services Program.

3. PROJECT COSTS

- 3.1 The Port will pay for services for the entire crew at the rate of \$55.00 per hour. Mileage will be based on the mileage reimbursement rate set by the Internal Revenue Service. Travel time will also be charged at the same hourly rate.

4. COMMUNICATION

- 4.1 The Port agrees to notify the Cowlitz County Offender Services Manager when services are needed.
- 4.2 The Offender Services Manager will respond to requests for services within three (3) business days with availability.

5. TERMS AND CONDITIONS

6.2 AMENDMENT

The provisions of this Agreement may be amended with the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of the Parties.

6.3 NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the Port: Port of Longview
Attn: Kara Metzger
10 Port Way
Longview, WA 98632
kmetzger@portoflongview.com
360-425-3305

To the Cowlitz County Corrections Department:
Attn: Jeremy Ehrmantrout
312 SW First Avenue
Kelso, WA 98626
EhrmantroutJ@co.cowlitz.wa.us
360-577-3118, ext. 3

6.4 DURATION OF AGREEMENT

This Agreement shall be effective on the date of execution by both Parties for a term of one year and will automatically renew annually for an additional one year term for a period of five years, and subject to the Parties' termination rights in Section 6.5.

6.5 TERMINATION OF AGREEMENT

- 6.5.1 Either of the Parties may choose to terminate this Agreement by notifying the other in writing 30 days prior to termination as provided for herein.
- 6.5.2 Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Section shall not relieve the Parties of liability for any obligation previously incurred.

6.6 RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of the termination of this Agreement, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit. In the event of litigation, claim,

or audit, the records and accounts, along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the initial six-year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

6.7 DISPUTES

The designated representatives herein under Section 6.3 NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

6.8 NO THIRD-PARTY BENEFICIARY

This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

6.9 INTENTIONALLY DELETED

6.10 DOCUMENT EXECUTION AND POSTING

Copies of this Agreement shall either be filed with the Cowlitz County Auditor's Office after execution or posted on each Parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective Party authorities.

6.11 INDEMNIFICATION AND HOLD HARMLESS

6.11.1 To the maximum extent permitted by law, each Party shall protect, defend, indemnify, and hold harmless the other Parties, their officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgements, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from the negligent acts or omissions of the other Party related to this Agreement.

6.11.2 The County, to the maximum extent permitted by law, shall protect, defend, indemnify, and hold harmless the Port, their officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgements, and/or awards of damages, including but not limited to reasonable attorney's fees ("Claims"), including third party Claims, to the extent arising out of, or in any way resulting from any act or omission of the Cowlitz County Work Crew related to this Agreement.

6.11.3 Each Party agrees that their obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of their employees or agents. For this purpose, each Party hereby waives, with respect to the other Parties only, immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.

6.11.4 The Parties recognize that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of

this Agreement against any other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

6.11.5 No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

6.11.6 The indemnification, hold harmless, and/or waiver obligation described in this Agreement in Section 6.11 shall survive the termination of this Agreement.

6.12 SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

6.13 VENUE

This Agreement shall be deemed to be made in the County of Cowlitz, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of Cowlitz, State of Washington.

6.14 LEGAL RELATIONS

6.14.1 Independent Municipal Governments. The Parties hereto are independent governmental entities, and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No separate legal or administrative entity is created by this Agreement. No joint venture or partnership is formed as a result of this Agreement. No employees or agents or any Party shall be deemed or represent themselves to be employees of the other Party.

6.14.2 Legal obligations. This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

6.14.3 Timely Performance. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.

6.15 ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement of the Parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The Parties participated equally in any negotiations and the process leading to execution of this Agreement. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

IN WITNESS WHEREOF, both parties have caused this Agreement to be executed by its duly authorized officers this ____ day of _____, 2019.

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PORT OF LONGVIEW

Norman G. Krehbiel

Norman G. Krehbiel, PE
Chief Executive Officer

**BOARD OF COUNTY
COMMISSIONERS OF COWLITZ
COUNTY, WASHINGTON**

Joe Hulman

Chairman

Dennis P. Miller

Commissioner

Anne Mortenson

Commissioner



ATTEST:

Robin Johnson

Robin Johnson
Executive Assistant

ATTEST:

Jeffrey Ostreim

Clerk of the Board

4-2-19

APPROVED AS TO FORM:
