

COPY

## INTERGOVERNMENTAL AGREEMENT

An Agreement ("Agreement") made in Vancouver, Washington, on the 22<sup>nd</sup> day of March, 2011, among the Port of Kalama, the Port of Longview, and the Port of Vancouver, USA, each, a municipal corporation organized and existing under the laws of the State of Washington (hereinafter individually referred to as a "Party" and collectively referred to as the "Parties").

### RECITALS

The Parties are Washington NonFederal Sponsors and parties to a Project Cooperation Agreement (hereinafter "PCA") for the Columbia River Channel Improvement Project (hereinafter "Project").

The Parties have agreed that it is desirable to engage the assistance of a consultant to provide services related to the Project and, that at this time, C. Dianne Perry Consulting LLC (hereinafter "Consultant") has entered into an Agreement with the Port of Longview to provide said services on behalf of the Parties. A copy of the Port of Longview Agreement is attached hereto as Exhibit "A" and referred to herein as the "Contract".

The Parties agree that although the Contract is with the Port of Longview, the Consultant is accountable to all of the Parties.

Pursuant to the laws of Washington, the Parties elect to enter into this Agreement to facilitate coordination of the Contract and other required activities to satisfy the Washington Non-Federal Sponsor's obligations under the PCA.

Therefore, the Parties agree as follows:

#### I. PURPOSE

- A. This is an Intergovernmental Agreement entered into under the authority of the Interlocal Cooperation Act, RCW 39.34, among the Parties.
- B. Pursuant to RCW 39.34, the purpose of this Intergovernmental Agreement is as set forth in Article I (PURPOSE). Its duration is as specified in Article II (DURATION OF AGREEMENT). Its method of termination is set forth in Article III (TERMINATION OF AGREEMENT). Its manner of financing and of establishing and maintaining a budget is described in Article VI (COST SHARING). No property shall be acquired pursuant to this Agreement that will need to be disposed of upon partial or complete termination of this Agreement.
- C. The purpose of this Agreement is to establish the duties and responsibilities of the Parties in facilitating coordination of funding and management of the Contract.
- D. The intent of the Parties is to cooperatively act pursuant to the provisions of the Interlocal Cooperation Act, RCW 39.34. There is no intent to create a separate legal or administrative entity by this Agreement.

## II. DURATION OF AGREEMENT

The term of this Agreement is for the period from February, 2011, through December 15, 2011, unless earlier terminated or amended as provided herein.

## III. TERMINATION OF AGREEMENT

- A. A majority of the Parties may choose to terminate this Agreement by notifying all of the Parties in writing 90 days prior to termination. Upon either party giving notice of termination as provided for herein, future performance obligations of the Parties shall be suspended until such time as the Parties further agree or until the Agreement terminates.
- B. 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.

## IV. SCOPE

The Parties shall work cooperatively and in good faith to manage the services of the Consultant in performing the Contract.

## V. DESIGNATION OF PROJECT MANAGER

- A. To provide for consistent and effective communication, the Parties appoint Ken O'Hollaren of the Port of Longview as the Project Manager.
- B. Until termination of this Agreement, the Project Managers shall:
  - i. Manage the Contract;
  - ii. Agree upon the scheduling and priority of work to be performed by the Consultant;
  - iii. Consult frequently with the Parties to ensure that this Agreement continues to serve each Party's requirements;
  - iv. Share information and documentation created by the Consultant; and
  - v. Ensure the payment of the necessary funds to the Consultant.
- C. The Project Manager shall not, without written approval of the Parties:
  - i. Terminate the Contract;
  - ii. Amend the Contract, including but not limited to extending the Contract or increasing the budget of the Contract; or
  - iii. Amend the Scope of Work.

VI. COST SHARING

- A. The Parties each agree to equally share the cost of the Contract. The Port of Longview shall bill the Port of Kalama and the Port of Vancouver one-third each of the Consultant's invoice. The Port of Kalama and the Port of Vancouver shall pay as invoiced to the Port of Longview within 30 days of receipt.
- B. Each Party's obligation shall not exceed one-third of \$50,000.00 without further written agreement by the Parties.

VII. NO THIRD PARTY BENEFICIARY

The Parties do not intend there be any third-party beneficiary to this Agreement.

VIII. NOTICE

Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the Port of Longview:

PORT OF LONGVIEW  
P.O. Box 1258  
Longview, WA 98632-7739  
Phone: (360) 425-3305  
Attention: Kenneth B. O'Hollaren  
Executive Director

To the Port of Kalama:

PORT OF KALAMA  
380 W. Marine Drive  
Kalama, WA 98625  
Phone: (360) 673-2325  
Attention: Lanny Cawley  
Executive Director

To the Port of Vancouver, USA:

PORT OF VANCOUVER  
3103 Lower River Road  
Vancouver, Washington 98660-1027  
Phone: (360) 693-3611

Attention: Lawrance L. Paulson  
Executive Director

The name and address to which notices shall be directed may be changed by any of the Parties giving the other Parties notice of such change as provided in this section.

IX. WAIVER

No waiver by either Party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

X. WITHDRAWAL

A Party may withdraw at any time, upon written notice to all of the Parties. In the event

that a Party withdraws from this Agreement after the receipt of any grant funds from a private or public grant, the withdrawing Party shall remain responsible for the full amount of that Party's contribution under this Agreement.

XI. 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 all of the Parties.

XII. ATTORNEYS' FEES AND COSTS

All Parties shall bear their own costs of enforcing the rights and responsibilities under the Agreement.

XIII. RATIFICATION

Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

XIV. DOCUMENT EXECUTION AND POSTING

The Parties agree that there shall be three (3) signed originals of this Agreement procured and distributed for signature by the necessary officials of each Party. Upon execution, the executed originals of this Agreement shall be returned to each identified Party. The Port of Vancouver, USA shall post a copy of this Agreement on the Port of Vancouver's website pursuant to Chapter 39.34.040 RCW. Upon execution of the originals and posting of a copy on the Port's website, each signed original shall constitute an agreement binding upon all Parties.

XV. SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

XVI. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

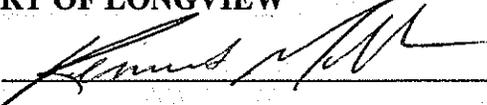
XVII. DISPUTES

Disputes among the Parties regarding this Agreement shall be referred to mediation using a mediator agreed upon by the Parties to the dispute. If the dispute is not resolved by mediation, the Parties shall be free to pursue any remedies to which they are entitled.

**XVIII. ENTIRE AGREEMENT**

This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

**PORT OF LONGVIEW**

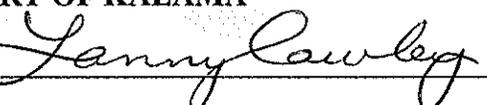
By: 

Title: Executive Director

Name: Kenneth B. O'Halloran

Date: March 7, 2011

**PORT OF KALAMA**

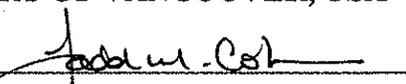
By: 

Title: EXECUTIVE DIRECTOR

Name: LANNY CAWLEY

Date: march 9, 2011

**PORT OF VANCOUVER, USA**

By: 

Title: DEPUTY EXECUTIVE DIRECTOR

Name: TODD M. COLEMAN

Date: MARCH 28, 2011

**EXHIBIT A**

**PORT OF LONGVIEW/DIANNE PERRY CONSULTING LLC AGREEMENT**