

INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into pursuant to authority of R.C.W. 39.34.080 and in conformance with R.C.W. 43.09.210, this 4th day of October, 2024, by and between LEWIS COUNTY, Washington, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the Port of Chehalis, a municipal corporation, hereinafter referred to as the "Municipality",

WITNESSETH:

IT IS HEREBY COVENANTED AND AGREED as follows:

1. Definitions.
 - a. "Board" means the Board of County Commissioners.
 - b. "Project" shall mean the administration, permitting, and construction of a fish passage structure designs at one (1) Municipality sponsored site, Site 601456 crossing Berwick Creek at Bishop Road MP 2.839
2. The Municipality requests that the County perform the work listed below and hereby guarantees reimbursement to the County for all authorized work done. The County will contract all necessary labor, material, consulting, and contracting services to complete administration, permitting, and construction of fish passage structure designs at one (1) Municipality sponsored site, 601456 crossing Berwick Creek at Bishop Road MP 2.839.
3. The Municipality hereby agrees to reimburse the Public Works Department of the County for all work done, based upon the actual cost of labor, materials used, consulting services, contracting services, and administrative services associated with the work involved. Reimbursement will be based on billings, supported by appropriate documentation of costs actually incurred, to be paid by Municipality. County shall not commence any work until Municipality has received the grant funding necessary to complete such work and notified the County in writing.
4. The Municipality certifies and warrants that it has the legal authority to accomplish this work with its own forces at the location herein specified but has insufficient manpower/equipment to accomplish this work.

5. Project Scope and Approval-Permits and Approvals. The County shall obtain and be responsible for all applicable approvals and permits for the work, and is responsible for compliance with all applicable laws, rules, and regulations.

6. It is understood and agreed that all reimbursable work as provided for herein shall be accomplished by the County, on behalf of the Municipality, in accordance with the requirements of the "Project Agreement between the Recreation and Conservation Office and the Municipality for 21-1459, Berwick Crk at Bishop Fish Passage Constr - FBRB". County will submit monthly invoices to the Recreation and Conservation Office for reimbursement to be provided to the Municipality. The Municipality will then pay the County pursuant to the invoices within 60 days after the date Municipality receives reimbursement from the Recreation and Conservation Office but in no event later than 90 days after receipt of an invoice from County notwithstanding any reimbursement.

7. Project Ownership and Maintenance. The County shall maintain ownership of, and shall be obligated to administer, permit, and construct the Project. The Municipality shall have no obligation or responsibility for administration, permitting, or construction of the Project.

8. Hold Harmless and Indemnification. To the maximum extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, and all of its officers, officials, employees, agents, contractors, and volunteers, from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of, or resulting from any negligent acts, errors, or omissions of the indemnifying Party and its officers, officials, employees, agents, contractors, and volunteers in performing obligations under this Agreement or in implementing the Project. However, if any such injuries and damages to persons or property are caused by or result from the concurrent negligence of the Municipality or its officers, officials, employees, agents, contractors, and volunteers, and the County or its officers, officials, employees, agents, contractors, and volunteers, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors, or volunteers.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated by the Parties.

9. Duration. This Agreement shall take effect on October 22, 2024, or as soon thereafter as all of the following events have occurred ("Commencement Date"):

- a. Approval of the Agreement by the official action of the governing bodies of each of the Parties;
- b. Execution of the Agreement by the duly authorized representative of each of the Parties; and
- c. Filing a copy of this Agreement or posting a copy of this Agreement to the Parties websites or recording a copy with the County Auditor as required by RCW 39.34.040.

10. Grant Funding. It is understood and agreed that the work described herein is subject to grant funding. If said grant funding is not procured, this Agreement shall be null and void.

11. Termination. This Agreement may be terminated by either the Municipality or the County, in whole or in part, if either party fails to materially comply with the aforementioned terms of this Agreement. Either party may also terminate the Agreement in whole or in part whenever that party determines, in its sole discretion, that such termination is in the interests of that party. Termination of this Agreement by either party at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the party terminating. Further, if at any time grant funding becomes unavailable this Agreement shall automatically terminate. Whenever the Agreement is terminated in accordance with this paragraph, the County shall be entitled to payment for actual work performed, which shall include actual cost of labor, materials used, consulting services, contracting services, and administrative services associated with the work involved.

12. Time is of the essence for all terms, conditions, obligations, and duties set forth or referred to in this Agreement.

13. Amendment. This Agreement may be modified by written instrument approved by the Municipality's governing body and the Board and signed by the authorized representatives of the Parties.

14. Governing law; Venue. This Agreement is made in Lewis County, Washington. It shall be construed, interpreted, and governed in accordance with the laws of the State of Washington, without reference to its choice of law principles. Any action to enforce any rights or obligations created by this Agreement or to construe this Agreement shall be brought exclusively in the courts of the State of Washington in and for the County of Lewis.

15. This Agreement shall be binding upon and inure to the benefit of the parties hereto and all of their respective heirs, successors, and assigns. The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

16. No Third Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

17. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the Parties relating to the Project and constitutes the entire agreement between the Parties.

18. Severability. If any provision of this Agreement is found to be invalid or contrary to law or public policy or is declared null and void by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and binding upon the parties.

19. Waiver. Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by the parties hereto or by their authorized representatives.

20. Administration. This Agreement will be jointly administered by the Municipality and the County. This Agreement does not create any separate legal or administrative entity.

21. Financing; Budget. This Agreement does not contemplate joint financing of the activities within its scope, nor does it contemplate a joint budget.

22. Property Acquisition and Disposition. This Agreement does not contemplate the joint acquisition of property by the parties. At termination, each party will remain the sole owner of its own property.

23. Recording. In accordance with RCW 38.34.040, this Agreement shall be filed with the Lewis County Auditor or listed on the web sites of the Parties prior to its effective date.

24. Headings Not Controlling. The headings in the Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.

25. This Agreement has been mutually negotiated and prepared and shall not be construed or interpreted adversely to any Party.

26. This Agreement may be executed in counterparts, and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

27. Compliance with RCW 39.34.030(6). If applicable, County shall comply with Chapter 39.80 RCW with regard to selection of architects and engineers to design the Project.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

APPROVED AS TO FORM:

Jonathan L. Meyer, Prosecuting Attorney

J. Bay
By: Deputy Prosecuting Attorney

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

Scott J. Brummer
Scott J. Brummer, Chair

ATTEST:

Rieva Lester
Rieva Lester, Clerk of the Lewis
County Board of County Commissioners

Lindsey R. Pollock, DVM
Lindsey R. Pollock, DVM, Vice Chair

Sean D. Swope
Sean D. Swope, Commissioner



PORT OF CHEHALIS

By: OS

Title: CEO

Date: 10/4/24

ATTEST:

By: Justine Pense
Justine Pense, Finance and
Administration Manager