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**INTERLOCAL COOPERATIVE AGREEMENT  
(Rail Projects Management Agreement)**

PORT OF PASCO

This Agreement entered into this 27<sup>th</sup> day of June, 2012, by and between the CITY OF PASCO, Washington, a municipal corporation, hereinafter referred to as "City" and the PORT OF PASCO, a municipal corporation, hereinafter referred to as "Port", is entered into as an Interlocal Cooperative Agreement in accordance with RCW 39.34 and the following terms and conditions:

**RECITALS**

A. The City and Port together with others have entered into an agreement dated February 12, 2009 entitled "Maintenance and Use of Rail Line and Latecomer Agreement" (the "Rail Use Agreement") in order to promote economic development within the jurisdictions of the City of Pasco and the Port of Pasco.

B. The parties' cooperative efforts in seeking funding for rail projects has resulted in obtaining funding for the rail line contemplated by the Rail Use Agreement (the "Heritage Rail Project") and for another project located at the Big Pasco Industrial Center ("BPIC Project"). The Heritage Rail Project and the BPIC Project are referred to jointly as the "Projects", defined below.

C. Heritage Rail Project: Install approximately 1 mile of new rail at Heritage Industrial Center in Pasco, Washington. Project extends from the end of the previously installed rail spur west of Oregon Avenue to Road 40 East. A grade crossing at Road 40 East may also be constructed, but only if there are sufficient grant funds.

BPIC Project: Complete Phase 5 of the Big Pasco Rail Hub project by installing approximately 4,000 LF of new rail along the Track 415 corridor, and refurbishing Tracks 411 and 416.

D. The City and the Port have determined that cooperative efforts to undertake the activities necessary for the construction of the Heritage Rail Project and the BPIC Project would constitute a substantial benefit to both the City and the Port; NOW, THEREFORE,

**AGREEMENT**

The City and the Port in order to identify each of their responsibilities in the accomplishment of this mutual purpose and in consideration of the mutual benefits to be received, agree as follows:

**Section 1. Purpose.** The purpose of this Agreement shall be coordinating the cooperative efforts of the Port and the City to engineer and construct the Projects utilizing grant funds, and to provide for administration of the Grant (as hereinafter defined), the preliminary engineering, the plans and specifications, the bidding, the construction management, and the

contracting for the work to complete the Projects. It also delegates rights and responsibilities relating to construction costs and grant administration.

**Section 2. Source of Funding.** The Port will be receiving funding from the Washington State Department of Commerce (“WSDOC”) for the completion of the BPIC Project and Heritage Rail Project. This funding (the “Grant”) has been awarded in the Washington State 2012 Capital Budget and this agreement is contingent upon receipt of such funding in the following amounts:

BPIC Project:	\$1,400,000.00
Heritage Rail Project:	\$1,800,000.00

These amounts will be reduced by the WSDOC’s administrative fee. The Grant is offered on a cost reimbursement basis.

**Section 3. Duties of the Parties.** The City will be the lead agency in regard to the design and construction of the Projects. The Port authorizes the City to perform all administrative duties required and contemplated by the Grant relating to engineering and construction of the Projects, including the preliminary engineering, plans and specifications preparation, and construction of the Projects. The City shall select engineering services and contractors in compliance with applicable laws, regulations and ordinances, and this Agreement.

The City shall work in conjunction with the Port in the selection of an engineering firm and in the preparation of plans and specifications. The engineering firm shall submit payment requests for engineering and for preparation of plans and specifications to the City on each of the Projects. The City shall review and submit such requests to the Port for payment. The Port shall have final review authority and shall pay the engineering firm directly.

The City shall select the contractor for each Project and contract with the contractor for the completion of the Projects. The contractor on each Project shall submit payment requests from time to time. The City shall review and submit such requests to the Port for payment.

The City shall submit to the Port for approval all contracts, plans, specifications, and engineering prior to approval by the City of such contracts, plans, specifications and engineering.

The Port shall be the lead agency in regard to the administration of the grant funds. The terms of the Grant shall be provided to the City, and the City shall comply with provisions relating to its responsibilities under this Agreement.

**Section 4. Funding and Costs.** The funding for the engineering and construction of the Projects will come from the Grant to the Port. Upon receipt of a pay request from the contractor or the engineer, said pay request shall be approved by the City on both the Heritage Rail Project and the BPIC Project. Upon City recommendation for payment, the Port shall pay the contractor or engineer directly, but maintains the authority for final approval.

Eligible costs for payment by the Port may include City administrative charges for the Heritage Rail project. The parties shall endeavor to keep costs of the Projects limited to the amount of the Grant. In the event costs are incurred that exceed the amount of the Grant, or are ineligible for reimbursement under the Grant, the responsibility for payment of the amounts unreimbursed by the Grant shall be as follows:

BPIC Project: Port  
Heritage Rail Project: Shared equally by the Port and the City

**Section 5. Accounting of Project Expenses.** Expenses associated with each of the Projects shall be accounted for separately.

**Section 6. Duration.** This Agreement shall commence on the date of execution and shall terminate as hereinafter provided.

**Section 7. Administration.** Administration of the mutual efforts provided in this Agreement shall be conducted by the City Manager for the City, and the Port Executive Director for the Port. No independent administrator or joint board shall be responsible for the administration of the cooperative activity provided hereunder. All funds received by grant shall be specifically administered by the Port and no joint or special fund shall be created.

**Section 8. Termination.** Termination of this Agreement shall be upon completion of the Projects or written mutual agreement of the parties. The Projects shall be owned by the Port, and no joint personal or real property is anticipated to be acquired pursuant to the terms of this Agreement.

**Section 9. General Indemnification.** The City of Pasco and the Port of Pasco each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence of the indemnitor or its elected or appointed officials, officers, employees or agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor. The indemnitor waives its immunity under Title 51 of the Revised Code of Washington solely for the purpose of this provision and acknowledges that this waiver was mutually negotiated. This provision shall survive the termination of this Agreement.

**Section 10. Captions.** The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**Section 11. Entire Agreement.** This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties.

**Section 12. Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Franklin County, Washington.

**Section 13. No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.


**Section 14. Amendment or Waiver.** This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the Port. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

**IN WITNESS WHEREOF**, the parties, duly authorized by appropriate motion, resolution or declaration, have signed this Agreement on the date and year first written above.

CITY OF PASCO

  
\_\_\_\_\_  
Gary Crutchfield, City Manager

Approved as to Form

  
\_\_\_\_\_  
Leland B. Kerr, City Attorney

PORT OF PASCO

  
\_\_\_\_\_  
James E. Toomey, Executive Director

Approved as to Form

  
\_\_\_\_\_  
Dan F. Hultgren, Port Attorney

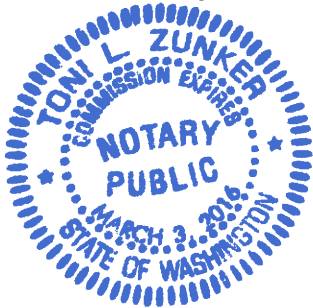
STATE OF WASHINGTON)

) ss.

County of Franklin )

On this 27<sup>th</sup> day of June, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gary Crutchfield to me known to be the City Manager of the City of Pasco, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Toni L. Zunker  
Printed Name: TONI L. ZUNKER  
Notary Public in and for the State of  
Washington, residing at Kennewick  
My commission expires: 3/3/16

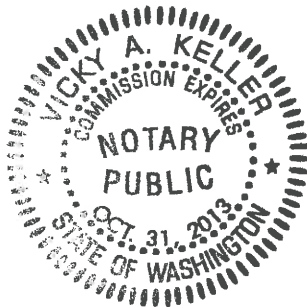
STATE OF WASHINGTON)

) ss.

County of Franklin )

On this 3<sup>rd</sup> day of July, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared James E. Toomey to me known to be the Executive Director of the Port of Pasco, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Vicky A. Keller  
Printed Name: Vicky A. Keller  
Notary Public in and for the State of  
Washington, residing at Franklin  
My commission expires: Oct. 31, 2013