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for
signed
version
to
City on 5/31

FILED FOR RECORD AT REQUEST OF:
City of Pasco, Washington

WHEN RECORDED RETURN TO:
City of Pasco
525 North 3rd
Pasco WA 99301

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN THE CITY OF PASCO AND
THE PORT OF PASCO**

THIS INTERLOCAL COOPERATIVE AGREEMENT, is made and entered into this _____ day of _____ 2017, pursuant to the Interlocal Cooperation Act, RCW 39.34, by and between the City of Pasco, a municipal corporation of the State of Washington, hereinafter referred to as the "City" and the Port of Pasco, a governmental subdivision of this State, and a public body corporate and politic, hereinafter called the "Port".

WHEREAS, the City of Pasco desires to contract for engineering services for preparation of a Feasibility Study (hereafter "Consultant") in evaluating a one-way intertie for the City of Pasco water system to provide fire suppression water service to the Port of Pasco water system; and

WHEREAS, the City of Pasco desires to contract with the Port of Pasco to share in half of the cost, of this Consultant pursuant to this Interlocal Agreement and to supply information as necessary to the Consultant on the existing utilities and fire suppression system of the Port of Pasco water system.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the Parties hereto as follows:

1. Scope of Work.

A) The Port's obligations shall be:

1) Provide all available data, reports, or other technical information on the Port's fire suppression system for use in the preparation of the Feasibility Study.

2) Provide payment to the City within thirty (30) days upon receipt of a properly executed invoice to the Port for 50% of the cost of the Consultant who is performing the Feasibility Study.

B) The City's obligations shall be:

1) Administer a contract with a Consultant to provide engineering services for the preparation of a Feasibility Study in evaluating a one-way intertie for the City of Pasco water system to provide fire suppression water service to the Port of Pasco water system.

2) Provide to the Port, when completed, electronic and hard copies of the completed Feasibility Study.

3) Invoice the Port for half of all costs incurred in obtaining the Feasibility Study.

4) Identify additional studies or other work necessary for establishing a one-way intertie for the City of Pasco to provide fire suppression water service to the Port of Pasco water system. Costs for additional studies or other work are not included in this Interlocal Agreement.

2. **Term.**

A) The term of this Agreement shall be for a period of one (1) year commencing on _____ and ending on _____; unless otherwise extended in writing signed by both parties, or terminated in writing signed by either party.

B) This Agreement may be modified or extended, in writing, at any time by the mutual consent of the parties hereto.

C) Either party may cancel this agreement on thirty (30) days written notice with or without cause. Any payment due either party up to the effective date of cancellation shall be due and payable to the appropriate party.

3. **Funding and Costs.** All costs incurred for Consultant to complete this Feasibility Study shall be shared equally between the City and Port. Each party shall be responsible for one-half of the total final cost. Costs for the proposed Feasibility Study are as depicted in Exhibit A attached hereto.

4. Liability/Hold Harmless.

A) The City shall indemnify, defend, and hold harmless the Port, its officers, agents, commissioners, and employees, from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by an act, omission or failure of the City, its officers, councils, agents and employees, in the performance of the Agreement.

B) The Port shall indemnify, defend, and hold harmless the City, its officers, councils, agents and employees, from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by an act, omission or failure of the Port, its officers, agents, commissioners and employees, in the performance of the Agreement.

5. Non-Discrimination. The Port and City agree not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, sex or age with regard to but not limited to the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rate of pay or other forms of compensation; selection for training or rendition of services. If either party violates this non-discrimination provision, the other party may terminate this agreement, in whole or in part, without incurring liability for such termination.

6. Jurisdiction. The agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Franklin County.

7. Waiver. Any waiver by any party hereto with regard to any of its rights hereunder shall be in writing and shall not constitute or act as a waiver to any future rights which such party might have hereunder.

8. Entire Agreement. This agreement sets forth in full the entire agreement of the parties in relation to the subject matter hereof, and any other agreement, representation, or understanding, verbal or otherwise, relating to the professional services of the Port or otherwise dealing in any manner with the subject matter of this agreement is hereby deemed to be null and void and of no force and effect whatsoever. This agreement may be waived, changed, modified, or amended only by written agreement executed by both of the parties hereto. If any provisions of this agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.

9. Interlocal Cooperation Act Provisions. All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by the City, shall remain the sole property of the City. All vehicles, equipment, inventory and any improvements thereto and non-fixture improvements to the premises purchased by the Port, shall remain the sole property of the Port.

All personnel utilized by the City in the fulfillment of this Agreement shall be solely within the supervision, direction and control of the City and shall not be construed as "loan servants" or employees of the Port. The City Manager of the City of Pasco, Washington, shall be designated as the Administrator of this Interlocal Agreement.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Franklin County Auditor's office or posted on the City or Port's website as required by RCW 39.34.040.

10. General Provisions. For the purpose of this Agreement, time is of the essence.

This Agreement is governed, construed and enforced in accordance with the substantive laws of the State of Washington. Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, venue shall be placed in Franklin County, Washington, and the prevailing party shall be entitled to its reasonable attorney fees and costs as additional judgment.

In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the City Manager and Executive Director, or their designees, shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Pasco, Franklin County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.

11. Notices. Written notice shall be directed to the parties as follows:

Port of Pasco
Attn: Executive Director
1110 Osprey Point Blvd.
Pasco, WA 99301

City of Pasco
Attn: Dan Ford
P.O. Box 293
Pasco, WA 99301

IN WITNESS WHEREOF, the undersigned having full authorization on behalf of the parties, have executed this Agreement on the year and date set forth above.

