

WHEN RECORDED RETURN TO:

PORT OF PASCO  
P O BOX 769  
PASCO, WA 99301

AFN # 1777930 AGREE  
02/01/2012 03:42 PM  
3 Page(s) \$69.00  
Matt Beaton, Auditor  
Franklin Co., WA

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Name of document: Interlocal Cooperative Agreement between the  
Franklin County and the Port of Pasco, Washington,  
for Underwater Remote Operated Vehicle Usage

Grantor(s): Franklin County  
Port of Pasco

Grantee(s): The Public

FRANKLIN COUNTY RESOLUTION NO. 2012 046

RECEIVED  
JAN 26 2012  
PORT OF PASCO

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY,  
WASHINGTON

RE: INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE PORT OF PASCO  
AND FRANKLIN COUNTY BY AND FOR THE SHERIFF'S OFFICE

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each  
county is authorized to enter into contracts on behalf of the county and have the care of county  
property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of  
Franklin County and desires to enter into the attached agreement as being in the best interest of  
Franklin County.


NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby  
approves the attached Interlocal Cooperative Agreement between Franklin County and the Port  
of Pasco, effective from the date of signing by Franklin County to April 30, 2016, or when the  
underwater ROV becomes obsolete, whichever date is earlier.

BE IT FURTHER RESOLVED the Franklin County Board of Commissioners hereby authorizes  
the Chairman to sign said agreement on behalf of the Board.

APPROVED this 25th day of January 2012.

BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Chairman Pro-Tem

Attest:

  
\_\_\_\_\_  
Clerk to the Board

  
\_\_\_\_\_  
Member

**INTERLOCAL COOPERATIVE AGREEMENT**  
**between**  
**THE FRANKLIN COUNTY AND THE PORT OF PASCO, WASHINGTON,**  
**for**  
**UNDERWATER REMOTE OPERATED VEHICLE USAGE**

**THIS INTERLOCAL COOPERATIVE AGREEMENT (Agreement)** is entered into this 25 day of January, 2012 between the Franklin County, Washington, a political subdivision of the State of Washington, by and for the Franklin County Sheriff's Office, and the Port of Pasco, Washington, a Washington Municipal Corporation, collectively referred to as the "Jurisdictions."

**WHEREAS**, the Jurisdictions are, pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act), authorized to exercise their powers jointly, thereby maximizing their ability to provide services and facilities which will best fulfill common needs of the Jurisdictions, and;

**WHEREAS**, the Jurisdictions have determined that the use of an underwater Remote Operated Vehicle ("ROV") that would mutually benefit both the Port of Pasco (Port) and Franklin County by providing significant safety improvements as well as availability to use for inspections on Port assets and is in the best interest of the Jurisdictions and the public, and;

**WHEREAS**, through this Agreement the Port will be allowed non-exclusive usage of the underwater ROV for inspections on terms as set forth herein the Agreement, and;

**WHEREAS**, the Jurisdictions, by their respective governing bodies, have determined this effort may be best implemented on a shared basis in a manner deemed most efficient and effective for the Jurisdictions;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Jurisdictions agree as follows:

**Section 1. Purpose.**

The purpose of this Agreement is to allow the Port of Pasco non-exclusive use of the Franklin County Sheriff Office's (FCSO) underwater ROV, which would enhance the safety of the Port's taxpayers and provide needed underwater investigation, access, and viewing as needed for the period as set forth in Section 6 herein, unless terminated sooner.

**Section 2. Administration.**

This Agreement shall be administered by the Franklin County Sheriff. The Sheriff shall be responsible for:

- (a) Establishing policies for implementing this Agreement as necessary;
- (b) Providing periodic progress reports as necessary;
- (c) Monitoring progress of the Jurisdictions and other agencies in the fulfillment of their respective responsibilities;
- (d) Providing proper safeguarding of the underwater ROV as per State Auditor's Office guidance when it is in the possession of FCSO.

### **Section 3. Funding.**

In exchange for non-exclusive use of FCSO's underwater ROV the Port of Pasco shall pay upon execution of this Agreement five thousand dollars (\$5,000.00) to FCSO.

### **Section 4. Acknowledgment.**

The Jurisdictions herein agree that at all times title to the underwater ROV shall vest in FCSO.

### **Section 5. Modification.**

This Agreement may be modified by written consent of both parties' authorized representatives.

### **Section 6. Term of Agreement and Termination.**

- (a) The term of this Agreement shall be from the date of signature by Franklin County to the earlier of the underwater ROV becoming obsolete or April 30, 2016.
- (b) Either Jurisdiction may terminate this Agreement for convenience by providing thirty (30) days written notice of termination to the non-terminating Jurisdiction. If Franklin County terminates this Agreement for any reason it shall reimburse the Port a pro-rated amount of the funding set forth in Section 3. If the Port terminates this Agreement for any reason there shall be no refund of the funding set forth in Section 3. Upon either Jurisdiction issuing a written notice to terminate this Agreement, the underwater ROV shall be returned to the possession of FCSO within ten (10) calendar days of the issued notice.

### **Section 7. Usage.**

To obtain use of the underwater ROV the Port shall contact FCSO and request its use. In requesting use of the underwater ROV the Port shall provide FCSO in writing, email permitted, information addressing the intended purpose of its use, the approximate location of its use, and the estimated duration of its use. FCSO shall then make the underwater ROV available for use to the Port if its currently in its possession, is not presently subject to use by FCSO or another entity, is in operating condition, and its intended use is consistent with this Agreement and permitted by law. It shall be the responsibility of the Port to acquire, transport, and return the underwater ROV to the location specified by FCSO. FCSO shall provide underwater ROV trained personnel to train Port personnel in the use of the underwater ROV. The Port agrees to timely pay FCSO for its accrued and invoiced reasonable labor and associated costs, if any, related to the underwater ROV training of Port personnel. The Port attests that it shall only permit the underwater ROV to be used by its employees who are trained by FCSO in its use.

Usage of the underwater ROV by the Port is intended for various inspections or investigations, including investigation of the Big Pasco shoreline for underwater debris, particularly debris that could be hazardous to persons wading or swimming, and/or for other uses as authorized by the Franklin County Sheriff.

### **Section 8. Care of Underwater ROV.**

Upon taking possession of the underwater ROV the Port shall be solely responsible for the proper care and security of the underwater ROV until it is returned to the possession of FCSO. Should any damage occur to the underwater ROV while in the possession of the Port as a result of Port negligence, other than damages incurred as a result of normal use, wear, or tear, it will be the responsibility of the Port to promptly repair such damage at its own expense.

### **Section 9. Disclaimer.**

Franklin County and FCSO make no representations or warranties as to the underwater ROV, nor its condition, nor any improvements located thereon. Said underwater ROV is possessed and used in its present, "AS IS, WHERE IS," condition WITH-ALL-FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED AS TO ITS CONDITION, ENVIRONMENTAL OR OTHERWISE, OR ITS SUITABILITY OR SUFFICIENCY FOR THE PORT'S INTENDED USES AND PURPOSES.

### **Section 10. Hold Harmless and Indemnification.**

Each Jurisdiction to this Agreement shall protect, defend, indemnify, and save harmless the other Jurisdiction, its officers, officials, employees, agents, offices, and departments while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Jurisdiction's negligent acts or omissions with respect to the provisions of this Agreement. No Jurisdiction will be required to indemnify, defend, or save harmless the other Jurisdiction if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the Jurisdiction; provided that if such claims, suits, or actions result from (a) the concurrent negligence of the Jurisdictions, or (b) involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Jurisdiction's own negligence.

The Jurisdictions specifically assume potential liability for actions brought by the Jurisdictions' own employees against the other Jurisdiction and, solely for the purposes of this indemnification, the Jurisdictions mutually waive and immunity they might have under the state industrial insurance laws, Title 51 RCW.

These indemnifications shall survive the termination of this Agreement.

### **Section 11. Insurance.**

Each Jurisdiction shall maintain throughout the term of this Agreement occurrence-based property and liability insurance with limits of not less than one million dollars covering each Jurisdictions' performance under this Agreement. Additionally each Jurisdiction shall maintain all other insurance as required by applicable law.

### **Section 12. Supervision and Independent Capacity.**

The employees of each Jurisdiction who are engaged in the performance of this Agreement shall continue to be employees of that Jurisdiction and shall not be considered for any purpose to be employees of the other Jurisdiction. Each Jurisdiction shall be solely responsible for the supervision of its own employees.

**Section 13. Retention and Inspection of Records.**

The records and documents with respect to all matters covered by this Agreement shall be subject to retention and inspection by any Jurisdiction during the term of this Agreement and for three (3) years after its termination. If any litigation, claim, or audit is commenced and the Jurisdiction has noticed of such, all records shall be retained until all litigation, claim, or audit finding has been resolved even though it may continue past the three (3) years.

Records and other documents, in any medium, furnished by one Jurisdiction to this Agreement to the other Jurisdiction, will remain the property of the furnishing Jurisdiction, unless otherwise agreed.

**Section 14. No Separate Legal Entity.**

It is not the intention that a separate legal entity be established to conduct the cooperative undertaking nor is the acquiring, holding or disposing of real or personal property anticipated.

**Section 15. Severability.**

In the event any term or condition of this Agreement or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not effect any other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

**Section 16. Assignment.**

This Agreement, as well as any claim arising thereunder, is not assignable or delegable by either Jurisdiction in whole or in part.

**Section 17. Entire Agreement.**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the day and year written below.

PORT OF PASCO

By: James E. Toomey  
James E. Toomey  
Executive Director

BOARD OF COUNTY COMMISSIONERS  
Franklin County, Washington

Brad Peck  
Chairman

Rick Miller  
Chair Pro Tem

Robert Koch  
Member

ATTEST BY:

Mary Withers 2012-046  
Clerk of the Board

APPROVED AS TO FORM:

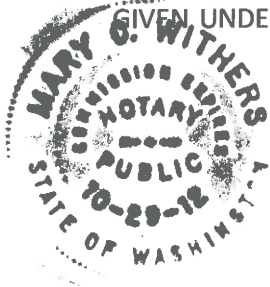
by: Ryan E. Verhulp  
Ryan E. Verhulp  
Deputy Prosecuting Attorney

STATE OF WASHINGTON

SS.

COUNTY OF FRANKLIN

THIS IS TO CERTIFY that on this day before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Koch, Rick Miller, and Brad Peck, to me known to be Board of Franklin County Commissioners, the municipal corporation that executed the within and 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/she was authorized to execute said instrument.



GIVEN UNDER my hand and official seal this 25 day of January, 2012.

Mary C. Withers

Notary Public in and for the State of Washington,

Residing at Eltopia

My Commission Expires: 10-29-2012

STATE OF WASHINGTON

SS.

COUNTY OF FRANKLIN

THIS IS TO CERTIFY that on this day 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 within and 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 said instrument.

GIVEN UNDER my hand and official seal this 13 day of January 2012.

Vicky A. Keller

Notary Public in and for the State of Washington,

Residing at Franklin Co.

My Commission Expires: Oct. 31, 2013

