

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Board of County Commissioners

DATE: September 30, 2014

REQUEST: That the Board of County Commissioners (BOCC) approve and execute an Interlocal Agreement (ILA) with the Port of Vancouver for economic development, research and planning services.

CHECK ONE: X Consent County Administrator

BACKGROUND: This ILA between Clark County and the Port of Vancouver establishes the terms and conditions for the planning and execution of projects of mutual interest related to economic development and job creation. The ILA provides a basis for the sharing of resources and funding to conduct activities such as collaborative environmental permitting, marketing, joint grant applications, land aggregation, outreach communications, planning, studies, research, contracting, development and construction of projects, including transportation facilities, infrastructure and utilities. Each project will have its own separately defined scope of work, will define each agency's respective responsibilities associated with respect to the project's cost and delivery, and follow each agency's respective approval processes and policies.

The ILA will allow the County and Port each to better serve the citizens of Clark County through the scalable, efficient use of public physical and financial resources and shared planning, and to better achieve the aim of economic development, employment and business growth.

COMMUNITY OUTREACH: No public outreach is required for this action.

BUDGET AND POLICY IMPLICATIONS: None.

FISCAL IMPACTS: ☐ Yes ☒ No

ACTION REQUESTED: That the Board of County Commissioners (BOCC) approve and execute an interlocal agreement with the Port of Vancouver for economic development, research and planning services.

DISTRIBUTION: Prosecuting Attorney, County Auditor, Mark McCauley


Jeff Swanson
Director of Economic Development

JS/js

APPROVED: 9-30-14
CLARK COUNTY, WASHINGTON
Board of County Commissioners

SR 216-14





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**INTERLOCAL AGREEMENT
BETWEEN
CLARK COUNTY, WASHINGTON
AND PORT OF VANCOUVER, WASHINGTON**

CO 14-48

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the "Agreement", is entered into under authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the PORT OF VANCOUVER, a municipal corporation of the State of Washington, hereinafter referred to as the "PORT", and CLARK COUNTY, a municipal corporation of the State of Washington, hereinafter referred to as the "COUNTY", each as "party" or collectively "parties".

RECITALS:

WHEREAS the COUNTY and the PORT are mutually interested in job creation and the economic development of the community; and

WHEREAS the COUNTY provides planning, studies, regulation and project development related to economic development within multi-modal transportation, storm water, land use and environment disciplines; and

WHEREAS the PORT provides planning, project development, land development, land aggregation, infrastructure and utility development, land use and environment disciplines, marketing and other services related to freight transportation, economic development and job creation within the Port of Vancouver statutory limitations; and

WHEREAS, the COUNTY and the PORT may choose to share funding and resources to support job creation and economic development; and

WHEREAS, the COUNTY and the PORT provide a benefit to the citizens of the county by collaborating on appropriate projects and planning;

NOW THEREFORE the COUNTY and the PORT agree:

SECTION 1: PURPOSE

The purpose of this Agreement is to establish the basis of cooperation between the COUNTY and PORT regarding planning and execution of projects for industrial development, job creation and economic development purposes of mutual interest.

SECTION 2: SCOPE OF SERVICES

Projects undertaken under this Agreement shall have an economic development purpose. They may include but are not limited to:

- A. Collaborative environmental permitting;
- B. Marketing;
- C. Planning, development and construction of transportation facilities;
- D. Planning, development and construction of infrastructure and utilities;
- E. Collaborative grant applications including preparation, application, and project implementation;
- F. Land aggregation;

- G. Joint outreach and communication; and
- H. Collaborative planning, studies, research and contracting.

SECTION 3: APPROVAL OF PROJECTS AND BUDGETS

The COUNTY and the PORT shall furnish the necessary personnel, equipment, material and services necessary or incidental to the performance of work performed under this Agreement. Each project executed under this Agreement shall have written approval as required by each party's approval policy. Each project scope shall define:

- A. Purpose, scope, and deliverables.
- B. Standards and process for approval of completed project by executive officers or legislative bodies.
- C. Lead party for project implementation and delivery.
- D. Lead party for communications to the public.
- E. Project contacts at both the COUNTY and the PORT.
- F. Timeline.
- G. Total cost and cost distribution across parties.

SECTION 4: BILLING PROCEDURE

Invoices shall be submitted to, or distributed from, the lead party at least quarterly, but no more than monthly. Payment for approved and completed work will be made within sixty (60) days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within thirty (30) days after the expiration date or the end of the lead party's fiscal year, whichever is earlier.

SECTION 5: ASSIGNMENT/SUBCONTRACTING

Neither party shall transfer or assign, in whole or in part, its respective rights or obligations under this Agreement without the prior written consent of the other party. Neither party shall subcontract services necessary to implement an approved project without the prior written consent of the other party. Consent for assignment, transfer or subcontracting shall not be unreasonably withheld.

SECTION 6: INDEPENDENT CAPACITY

Employees or agents of a party engaged in the performance of projects under this Agreement shall continue to be employees or agents of that party and shall not be considered employees or agents of the other party.

SECTION 7: AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by the mutual agreement of the parties. Amendments are binding if they are in writing and signed by personnel authorized to bind the party.

SECTION 8: TERMINATION AND TERMINATION FOR CAUSE

Either party may terminate this Agreement with thirty (30) days prior written notice to the other party. If the Agreement is terminated, parties shall be liable only for project deliverables and costs incurred before the effective date of termination.

If a party does not fulfill the obligations under this Agreement in a timely and proper manner, or if a party violates the terms or conditions of this Agreement the aggrieved party will give the other party

written notice of the failure or violation. The notified party will be given fifteen (15) working days to correct the violation or failure. If the violation or failure is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other party.

SECTION 9: DISPUTES

Disputes between the COUNTY and PORT regarding delivery of services that cannot be resolved by the respective contract managers shall be reviewed by the Clark County Administrator and the Port of Vancouver Chief Executive Officer who shall review the dispute and options for resolution.

SECTION 10: RECORDS MAINTENANCE

Parties shall retain project records that sufficiently and properly reflect all direct and indirect costs incurred for the performance of services in this Agreement. Records shall be subject to inspection, review or audit by personnel of either party and the Office of the State Auditor. All records shall be retained for six years after the completion of a project.

Records and other documents furnished by one party to another remain the property of the originating party. The receiving party will not disclose material to third parties without giving written notice to the originating party and giving the originating party reasonable opportunity to respond consistent with requirements of the Washington State Public Records Act, RCW 42.56.

SECTION 11: GOVERNANCE

This Agreement is entered into under the authority granted by the State of Washington and provisions of the Agreement shall be construed to conform to State laws. Inconsistency between the terms of this Agreement, or between the terms of this Agreement and any statute or rule shall be resolved by giving precedence in the following order:

1. Applicable State and Federal statutes and rules;
2. Statement of work;
3. Any other provisions of this Agreement, including documents incorporated by reference.

SECTION 12: INDEMNIFICATION

The PORT does release, indemnify and promise to defend and save harmless the COUNTY, its elected officials, officers, employees and agents from and against any and all liability, loss, damages, expense, action, and claims, including costs and reasonable attorney's fees incurred by the COUNTY, its elected officials, officers, employees and agents in defense thereof, asserting or arising directly or indirectly on account of or out of the performance of service pursuant to this Agreement. In making such assurances, the PORT specifically agrees to indemnify and hold harmless the COUNTY from any and all bodily injury claims brought by employees of the PORT and expressly waives its immunity under the Industrial Insurance Act as to those claims which are brought against the COUNTY. Provided, however, this paragraph does not purport to indemnify the COUNTY against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the sole negligence of the COUNTY, its elected officials, officers, employees and agents. Indemnification shall survive the expiration or termination of this Agreement.

The COUNTY does release, indemnify and promise to defend and save harmless the PORT, its elected officials, officers, employees and agents from and against any and all liability, loss, damages, expense, action, and claims, including costs and reasonable attorney's fees incurred by the PORT, its elected officials, officers, employees and agents in defense thereof, asserting or arising directly or indirectly on account of or out of the performance of service pursuant to this Agreement. In making such assurances,

the COUNTY specifically agrees to indemnify and hold harmless the PORT from any and all bodily injury claims brought by employees of the COUNTY and expressly waives its immunity under the Industrial Insurance Act as to those claims which are brought against the PORT. Provided, however, this paragraph does not purport to indemnify the PORT against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the sole negligence of the PORT its elected officials, officers, employees and agents. Indemnification shall survive the expiration or termination of this Agreement.

Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents.

SECTION 13: WAIVER AND SEVERABILITY

Failure by either party to exercise rights under this Agreement shall not preclude that party from subsequent exercise of those rights and shall not constitute a waiver of any other right under this Agreement. Waiver of rights requires a written statement signed by an authorized representative of a party attached to the original Agreement.

Parties shall bear their own attorney fees and costs of enforcing the rights and responsibilities of this Agreement.

If any provision of this Agreement or provision of a document incorporated by reference to this Agreement is found invalid, the invalidity shall not affect other provisions of this Agreement if the other provisions can be given effect without the invalid provision. The provisions of this Agreement are declared severable.

SECTION 14: TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties on the subject of this Agreement. No other understandings, oral or otherwise exist or bind the parties.

SECTION 15: THIRD PARTY BENEFICIARIES

The PORT does not intend, by this Agreement, to assume contractual obligations to any party other than the COUNTY. The COUNTY does not intend, by this Agreement, to assume contractual obligations to any party other than the PORT. There are no third party-beneficiaries to this Agreement.

SECTION 16: PERIOD OF PERFORMANCE

The period of performance shall begin when it is approved by the PORT commission and recorded with the Clark County Auditor's Office and shall continue through December 31, 2020. The period of performance may be extended or amended as per Section 7 of this Agreement.

SECTION 17: NOTICES

Any notices given under this Agreement shall be delivered and addressed to:

Jeff Swanson, Director of Economic Development
Clark County
1300 Franklin Street
PO Box 5000
Vancouver, WA 98660

Katy Brooks, Director of Business Development
Port of Vancouver
3103 NW Lower River Road
Vancouver, WA 98660

SECTION 18: INTERLOCAL COOPERATION ACT COMPLIANCE

This Agreement is entered into pursuant to Chapter 39.34 RCW. Its purpose is set forth in Section 1. Its duration is specified in Section 16. Its method of termination is set forth in Section 8. Its manner of financing, and of establishing and maintaining a budget is described in Sections 3 and 4. This Agreement does not establish a separate legal entity to carry out the duties undertaken. Section 3 makes provision for administrators responsible for the undertaking. No property shall be acquired pursuant to this Agreement that needs disposal upon partial or complete termination of this Agreement.

IN WITNESS WHEREOF, CLARK COUNTY and the PORT OF VANCOUVER execute this Agreement by their duly authorized officers and cause this Agreement as of the 30th day of September, 2014.

Approved as to Form



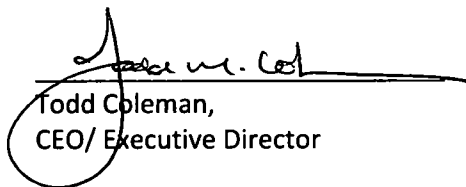
Chris Horne, Chief Civil Deputy
Prosecuting Attorney

CLARK COUNTY



Tom Mielke, Chair
Board of County Commissioners

PORT OF VANCOUVER



Todd Coleman,
CEO/ Executive Director