

INTERLOCAL AGREEMENT
BETWEEN THE PORT OF RIDGEFIELD
AND CLARK REGIONAL WASTEWATER DISTRICT
FOR STORMWATER FACILITY MAINTENANCE AND MITIGATION

THIS IS AN INTERLOCAL AGREEMENT to provide for stormwater facility maintenance and mitigation entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the **Clark Regional Wastewater District**, a special purpose district providing wastewater services within Clark County, Washington (the “District”), and the **Port of Ridgefield**, a municipal corporation (the “Port”).

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform; and

WHEREAS, the District is planning construction of the South Junction Sewer Upgrade, including mitigation planting and the Port is planning maintenance and mitigation work on a stormwater facility within the same area; and

WHEREAS, given the proximity of the contemplated work it is in the public interest for the Port and the District to include the stormwater facility maintenance within the District’s Project;

NOW, THEREFORE, pursuant to Chapter 39.34 RCW and in consideration of the terms, conditions, and covenants contained herein, as well as the attached Exhibits which are incorporated

and made a part hereof,

The parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to provide for construction of the Port Work (as defined below) as part of the District Project (as defined below).
2. RECITALS ADOPTED. The recitals set forth above are hereby adopted as the factual basis for this Agreement.
3. DEFINITIONS. Unless otherwise indicated in this Agreement, the following terms are defined as set forth below:

“Agreement” means this document and its terms, conditions, and covenants, as well as the attached Exhibits, which are incorporated herein and made a part hereof.

“Project” means a project specified in two bid packages generated by the District for the purpose of hiring a contractor to construct the South Junction Sewer Upgrade and associated pipelines in the City of Ridgefield near the intersection of S 6th Way and S Timm Road, including associated mitigation planting.

“Port Work” means removing sediment, trees and vegetation from a stormwater pond and replanting in the stormwater pond as shown and described on **Exhibit A**, attached hereto, and incorporated by this reference, and additional mitigation work as may be required by permitting agencies.

“Punch list” means a list of tasks to be completed in order for the Port Work to be accepted by the Port.

“Working days” means Monday through Friday, excluding Washington State and Federal holidays per RCW 1.16.050.

4. RESPONSIBILITIES OF PARTIES.

4.1. The District is responsible for contracting for the performance of the Port Work as required by this Agreement.

4.2. The Port is responsible for paying the District as required under this Agreement for the Port Work.

5. TERM. The term of this Agreement is from the date of this Agreement through June 30, 2024.

6. TERMINATION. Prior to award of the bid for the District Project, which must include the Port Work, either party may choose to terminate this Agreement by notifying the other party in writing thirty (30) days prior to termination. The termination must be effective prior to the award of the bid. After award of the bid, either party may terminate this Agreement only if the other party is in default under this Agreement and the default has not been corrected within a reasonable period of time, in light of the default, after proper notice of default.

6.1. If either the Port or the District terminates this Agreement, the Port shall reimburse the District for all of the District’s actual direct and related indirect expenses and costs, including design engineering, permitting, mobilization, construction engineering, construction, contract administration and overhead costs, incurred up to the date of termination and associated with the Port Work, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Port Work, and contractor claims, if any, payable in accordance to Section 7. The District agrees to provide to the Port all Port Work-related documents upon final payment

by the Port.

6.2. Before or after making the reimbursement payment pursuant to Section 6.1, the Port has the right to seek any and all remedies available at law, in contract or in equity, singly or in combination, in a court of competent jurisdiction.

7. BID ADVERTISEMENT AND AWARD.

7.1. The District, acting on behalf of the Port, shall contract for design, permitting and construction of the Port Work, in accordance with this Section.

7.2. The bid documents must include construction of the Port Work per Port-approved plans, special provisions, and standard specifications, per the 2020 Washington State Standard Specifications for Road, Bridge, and Municipal Construction, and per any other Port standards and requirements ("Port Plans").

7.3. The Port shall ensure that all Port standards and requirements are set forth in the adopted bid documents, and that it has supplied the District with all applicable standards, codes, regulations, or any other requirements that the Port must meet in order for the Port Work to be included in the bid documents.

7.4. The District will include the Port Work in the bid advertisement for the District Project in accordance with the Port Plans. The Port Work will be included as a separate bid schedule. The District will be the Port's representative during the advertisement and award period. When requested by the District, the Port shall timely assist the District in answering bid questions and resolving any design issues related to the Port Work. The District will not answer any pre-bid questions regarding the Port Work without the Port's approval. All comments and clarifications related to the bidding process must go through the District.

The District will provide the Port with written notification of the bid price no later than two (2) days after the bid opening. The Port shall respond in writing to the District, stating its acceptance or rejection of the Port Work, within two (2) working days of the written notification.

7.5. If the Port rejects the bid for the Port Work, the District shall delete the Port Work from the District Project. The Port agrees to reimburse the District for engineering and permitting costs, and direct and related indirect costs incurred by the District for deleting the Port Work from the District Project, and to pay such costs in accordance with Section 10 (Billing Method and Process).

8. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.

8.1. The District agrees to administer and inspect the Port Work on behalf of the Port.

8.2. All materials removed by the District shall be reclaimed or disposed of by the District and shall become the property of the District or the Contractor if so designated in the bid documents.

8.3. The District will keep the Port advised as to the progress of the Project. The District shall notify the Port if the Port Work cannot be completed as designed, regardless of cause. Whenever practical, the Port shall have final discretion with regard to the design of field-adjustments relating to the Port's Work. To the extent reasonably practicable, the Port will provide the Contracting Party with its approval of any design field-adjustment decisions or alternative designs at least ten (10) working days before the anticipated work is scheduled to be performed.

8.4. All contact between the Port and the District's contractor shall be through the District's representatives. However, a Port inspector may be on the Port Work project site to observe

the construction of Port Work and verify that the District's contractor is complying with the Port Plans.

8.5. If the contractor requests working outside of the hours specified in the construction contract, the District shall receive approval from the Port before approving the contractor's request. The District will inform the Port of any proposed contractor schedule changes and the Port must approve those changes prior to the District approving such proposed schedule changes. The Port may attend scheduled weekly construction meetings to ensure necessary communication between the District, Port, and Contractor.

8.6. Upon substantial completion of the Port Work, the District shall provide the Port with a written notice of its intent to issue a formal notice of substantial completion to the contractor. The Port shall, within fourteen (14) calendar days of being notified by the District of its intent to issue a notice to the contractor that the Port Work is substantially complete, perform any necessary walk-through or inspection of the Port Work and either (a) deliver to the District a written letter of acceptance, or (b) deliver to the District a written explanation in punch list format, detailing the reasons why the Port Work does not comply with the approved specifications and plans. The Port and the District will work diligently and in good faith to resolve any issues relating to the Port Work so as not to delay the District's acceptance of the Project. If issues raised by the Port are resolved, the Port shall immediately deliver to the District a letter of acceptance.

If the Port does not respond within fourteen (14) calendar days as required by this Section, the Port Work and the administration thereof shall be deemed accepted by the Port, and the District shall be released from all future claims and demands related to the Port Work. Acceptance of the Port Work by the Port shall not constitute acceptance of any

unauthorized or defective work or materials, nor be a waiver of any manufacturer's, supplier's, or contractor's warranties.

8.7. Upon completion of the Port Work, and at the request of the Port, the District will provide the Port with construction documentation, including but not limited to material submittals, inspection reports, and payment quantity calculations.

8.8. Upon completion and acceptance of the Port Work, the Port agrees that it shall be solely responsible for all future ownership, operation, and maintenance costs of the Port Work, without District liability or expense; provided, that the Port shall not be responsible for any repair and maintenance costs that are the responsibility of the District's Contractor.

8.9. The District will prepare the final construction documentation, including the Port Work, in general conformance with the District's construction practices. The District will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard District practice. Once the Port has accepted the Port Work per Sections 8.6 or 8.7, upon request by the Port the District will provide one copy of the record drawings to the Port in PDF format.

8.10. The District's contractor shall warrant the workmanship and materials utilized in the Port Work to be free from defects for a period of one (1) year from the date of the District's final acceptance of the Port Work, with all such warranties running to the Port as a third party beneficiary with full authority to make such warranty claims.

9. COST OF WORK. The Port agrees that it shall be responsible for the actual direct and related indirect costs of the Port Work, including but not limited to project management, design engineering, permitting, construction, construction engineering, survey, contract

administration, and overhead costs. The estimated cost of the Port Work is forty-four thousand one hundred forty-eight dollars and zero cents (\$44,148.00) plus a 5% fee for project management services and a 5% fee for construction engineering services (totaling \$4,414.00) (referred to collectively herein as the "Cost Estimate"). An itemized estimate of the Port's responsibility for costs of the Port Work to be performed by the District on behalf of the Port is included in **Exhibit B**, attached hereto, and incorporated by this reference. The parties agree that the Cost Estimate is provided only for informational purposes, and that the Port's total financial responsibility may be more or less than the amount indicated in the Cost Estimate, dependent upon the actual costs of the Port Work.

10. BILLING METHOD AND PROCESS.

10.1. Should the Port fail to make payment according to the terms of this Agreement, the District shall have the right to terminate this Agreement, and to charge the Port for the District's associated costs of termination including non-cancellable items, District costs resulting from a delay due to the termination, and unpaid contractor charges for the Port Work.

10.2. The Port, in consideration of the Port Work to be performed by the District, agrees to pay the District for the actual direct and related indirect cost of all Port Work for which the Port is responsible, including project management, design engineering, permitting, construction, construction engineering, survey, contract administration, and overhead costs. The District shall invoice the Port, providing with the invoice sufficient documentation and information to justify the costs. The Port agrees to pay the District within thirty (30) calendar days of receipt of an invoice; provided, that if the Port disagrees with all or part of an invoice, the Port shall notify the District of the disagreement within

twenty (20) calendar days of receipt of an invoice. The notice shall include an explanation of the disagreement and supporting documentation and information, if any. The Port shall pay all parts of an invoice that are not contested within the thirty-day period. The Port shall pay a contested portion of an invoice within thirty (30) calendar days after the parties resolve the disagreement.

10.3. Billing for services will be monthly after commencement of design until the District Project is complete.

10.4. Payments that are not paid within the applicable periods in Section 10.2 shall be considered delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month and shall be assessed a twenty-five dollar (\$25.00) late charge each month that the amount is delinquent.

10.5. Payments will be remitted to the following address:

Clark Regional Wastewater District
Finance Department
PO Box 8979
Vancouver, WA 98668-8979

11. CHANGE IN WORK OR COST INCREASE.

11.1. If unforeseen conditions cause the estimate of the Port Work to exceed the Cost Estimate (including sales tax, engineering, and contingencies) as shown on **Exhibit B** by more than ten percent (10%), the District will notify the Port of the anticipated increase and seek the Port's approval before the District authorizes additional work or expenses and/or before the District authorizes payment to the District's contractor relating to the Port Work. The Port will review and approve or deny the requested increase in cost within

five (5) working days of the date the District receives information concerning such cost increase.

11.2. If the District desires or the Contractor requests to add to or change the Port Work, it shall give notice to the Port, except as provided in Section 11.3 below. The Port shall respond to the District request within five (5) working days of receipt of the request. The District cannot proceed with the addition or change to the Port Work unless the Port approves the addition or change in writing. If the Port fails to respond to the District's request within the five (5) day period, the Port shall be deemed to have denied the request. The Port agrees to pay all costs associated with any Port-approved addition or change to the Port Work, as well as the costs of District Project or Port Work delays and/or District-approved contractor claims associated with the Port's failure to respond timely or the Port's failure to approve a meritorious change order.

11.3. When the District determines that a change in the Port Work is required to mitigate a District Project emergency or safety threat to the traveling public, the District may direct the change without the Port's prior approval. The District will notify the Port of such change in writing and the basis for the emergency or safety threat as soon as it becomes known to the District and can be reasonably communicated. The District's first priority will be to address the emergency or safety threat. The Port agrees to pay all cost associated with emergency or safety threat changes to the Port Work.

11.4. The Port may request in writing changes or additions to the Port Work, provided the Port provides the necessary plans and specifications for the change or addition. The District shall respond to the Port request within five (5) working days of receipt of the request. The District shall implement the requested changes as "elective changes," as long

as the change does not negatively impact the District's Project and otherwise complies with the bid documents, District Project permits, applicable laws, rules, regulations, and/or District policies, and does not unreasonably delay critically scheduled District Project activities. The District shall respond to the request within five (5) working days, and if the change or addition is approved (as requested or amended by agreement), shall include in the response the terms and conditions of the approved change or addition, including the cost, if any.

11.5. The Port agrees to pay for the increases in District Project cost, if any, for elective changes approved under Section 11.4 in accordance with Section 10 (Billing Method and Process).

11.6. The District will make available to the Port all change order documentation related to the Port Work prior to the District approving any contract changes.

11.7. Any contractor request submitted to the District for permission to use different materials or structures for the Port Work will be provided to the Port for immediate review. The Port will have five (5) working days to advise the District as to whether it accepts the different material or structure. If no response is made within the five (5) working days by the Port, the District contract manager designated under Section 12 will be allowed to make a determination on the Port's behalf.

12. ADMINISTRATION/COMMUNICATIONS. Contract managers designated by the Port Chief Executive Officer and the District General Manager shall administer this Agreement, monitor service level, and budget provisions of this Agreement, communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

13. DISPUTE RESOLUTION. In the event of a dispute between the Port and the District which

cannot be resolved by the contract managers, the Port Chief Executive Officer and the District General Manager or their designated representatives shall review such dispute and attempt to resolve the dispute.

13.1. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of this Agreement that cannot be resolved by the Port Chief Executive Officer and the District General Manager may be submitted to mediation. If the dispute is not resolved through mediation, upon agreement of the Parties this dispute may be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW.

13.2. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington. Each Party shall be responsible for its own attorney's fees and costs.

14. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. The District shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the Port an employee of the District or any employee of the District an employee of the Port for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

15. HOLD HARMLESS/INDEMNIFICATION. To the extent authorized by law, the Port and District shall indemnify and hold harmless one another and their employees, officers, contractors and agents, from and shall process and defend at their own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incidental to the other Party's performance or failure to perform any aspect of this Agreement, provided, that if such claims are caused by or result from the concurrent negligence of (a) the Port and (b) the District, their respective employees, officers, contractors, or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Port or the District, and provided further, that nothing herein shall require the Port or District to hold harmless or defend the other or its employees, officers, contractors, or agents from any claims arising from that Party's sole negligence or that of its employees, officers, contractors, or agents. The terms of this section shall survive the termination of this Agreement.

15.1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against either party, each party retains the right to participate in said suit if any principle of public law is involved.

15.2. Even if damages are capped against a Party under Washington State industrial insurance law, Title 51 RCW, this indemnity and hold harmless provision and the obligations therein include any claims made against a Party by an employee, officer, contractor, subcontractor, or agent of the other Party. For example, if a District employee files an industrial insurance claim against the District but then files a court action against the Port because he believes his damages exceed the industrial insurance award, then the

District's immunity shall not invalidate this indemnification provision and the District shall hold the Port harmless and shall indemnify the Port in full, including defense costs. This waiver of immunity would not be effective if damages are due to the sole negligence of the Port. Both parties specifically acknowledge that the provisions in Section 15 have been mutually negotiated by the Parties, and it is the intent of the Parties that each party provide the other Party with the broadest scope of indemnity permitted by RCW 4.24.115.

16. ATTORNEYS FEES AND COSTS. The Parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

17. NO THIRD PARTY BENEFICIARY. The Port does not intend by this Agreement to assume any contractual obligations to anyone other than the District. The District does not intend by this Agreement to assume any contractual obligations to anyone other than the Port. The Port and District do not intend there be any third-party beneficiary to this Agreement.

18. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the District:

CLARK REGIONAL WASTEWATER DISTRICT
PO Box 8979
Vancouver, WA 98668-8979
Attention: General Manager

To the Port:

PORT OF RIDGEFIELD
PO Box 55
Ridgefield, WA 98642
Attention: Chief Executive Officer

The name and address to which notices shall be directed may be changed by either Party giving

the other notice of such change to the other as provided in this section.

19. **WAIVER.** No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.
20. **INTERLOCAL COOPERATION ACT COMPLIANCE.** This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 5 (Term). Its method of termination is set forth in Section 6. Its manner of financing and of establishing and maintaining a budget therefor is described in Sections 9 (Cost of Work) and 10 (Billing Method and Process). No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
21. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.
22. **AMENDMENT.** The provisions of this Agreement may not be amended without the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties, except as provided in previous sections.
23. **AUDIT AND RECORDS.** During the progress of the Port Work and for a period of not less than three (3) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Port Work and shall make them available during normal business

hours and as often as necessary, for inspection and audit by the other Party, State of Washington, and/or Federal Government, and copies of all records, accounts, documents or other data pertaining to the Port Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim, or audits are commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

24. DOCUMENT EXECUTION AND FILING. The Port and the District agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the authorized officials or employees of the Port and the District. Upon execution, one executed original of this Agreement shall be retained by the District and one shall be retained by the Port. The District shall cause a copy of this Agreement to be posted on the District website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the District website, each such duplicate original shall constitute an agreement binding upon the Parties. One each of the duplicate originals shall be distributed to the designated agents of the Parties, named as follows:

Randy Mueller, CEO
Port of Ridgefield
PO Box 55
Ridgefield, WA 98642

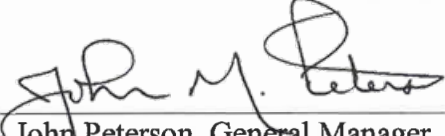
Heath Henderson, P.E.
Clark Regional Wastewater District, Engineering Director
PO Box 8979
Vancouver, WA 98668-8979

25. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

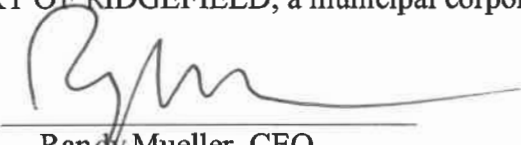
26. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the Port and District have caused this Agreement to be executed in their respective names by their duly authorized officers or employees and have caused this Agreement to be dated as of the 27th day of December, 2022.

CLARK REGIONAL WASTEWATER DISTRICT

By: 
John Peterson, General Manager

PORT OF RIDGEFIELD, a municipal corporation

By: 
Randy Mueller, CEO

ATTACHMENTS:
EXHIBIT "A"
EXHIBIT "B"

[illegible]

SCHEDULE C IMPROVEMENTS
NOTE: ALL WORK SHOWN ON THIS SHEET SHALL BE INCLUDED IN THE SCHEDULE C SCOPE OF WORK INCLUDING REMOVAL OF EXISTING TREES AND VEGETATION, REMOVAL OF EXISTING SOIL, GRADING, SURFACE RESTORATION AND SEEDING AS SHOWN.

DRAWING NO:

13 of 18

SOUTH JUNCTION
SEWER UPGRADE



wallis
*engineering

PROJECT NO: _____
DATE: 10/2022

STORMWATER FACILITY
IMPROVEMENTS PLAN

ONE INCH	ONE INCH	ONE INCH AT FULL SCALE. IF NOT ONE INCH ADJUST SCALE ACCORDINGLY	DB
CK	CK	CK	DB
CI/MMW	CI/MMW	CI/MMW	DB



EXHIBIT "B"

COST ESTIMATE FOR STORMWATER FACILITY MAINTENANCE

Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
C1	Minor Change	1	LS	\$5,000	\$5,000
C2	Clearing and Grubbing	1	LS	\$7,500	\$7,500
C3	Stormwater Facility Excavation	215	CY	\$60	\$12,900
C4	Water Quality Seeding	1200	SY	\$3	\$3,600
Subtotal					\$29,000
Design and Permitting					\$15,148
Project Management					\$2,207
Construction Management					\$2,207
GRAND TOTAL					\$48,562

