

INTERGOVERNMENTAL AGREEMENT

Among
PACIFIC COUNTY, WASHINGTON
The
PORT OF CHINOOK
And The
FRIENDS OF CHINOOK SCHOOL

THIS AGREEMENT made and entered into by and among Pacific County, hereinafter referred to as the COUNTY, the Port of Chinook, hereinafter referred to as the PORT, and the Friends of Chinook School, hereinafter to as the FRIENDS, WITNESSES THAT:

WHEREAS, the parties are desirous of entering into an AGREEMENT to formalize their relationship, and

WHEREAS, pursuant to funds appropriated by the Washington State Legislature in 2 EHB 115, and awarded as grant HCP 17-24 to the PORT by the Washington State Historical Society to fund certain capital improvements at the Chinook School in compliance with all applicable local, state and federal laws, regulations and policies, and

WHEREAS, the PORT is experiencing a short term cash flow shortage, and is in a period of transition with new members to the Board of Directors, and new management approached the COUNTY about partnering to serve as the fiscal agent for this grant; and

WHEREAS, the COUNTY recognizing the historic significance of the Chinook school, and its value as a community center, has agreed to serve as fiscal agent for grant HCP 17-24;

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein, and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Services to be Provided by the Parties:

The PORT:

- a. Will serve as the grantee and enter into a contractual relationship with the Washington State Historical Society obligating the PORT, in partnership with the FRIENDS, to complete certain capital improvements to the Chinook School, and to provide all required match.
- b. Will comply with all terms and conditions included in Grant HCP 17-24, included as Attachment A to this agreement.
- c. Will approve and sign all invoices prepared by Powell and Seiler Accounting on behalf of the FRIENDS prior to submission to the COUNTY for processing, payment and final submission to the State.
- d. Agrees that reimbursements received by the COUNTY Treasurer on behalf of the PORT related to Grant HCP 17-24 will be transferred by the Treasurer to the COUNTY's Capital Improvement Fund.

- e. Agrees that any payments not reimbursed by the State for expenses paid by the COUNTY on behalf of the PORT will be paid by the PORT to the COUNTY within 30 days of the closeout of this AGREEMENT, and should the PORT not pay within the 30 days the full faith, credit, and resources of the PORT are pledged irrevocably for the fully payment of any outstanding balance due to the COUNTY.

The FRIENDS:

- a. Will serve as contact person/lead for the coordination of activities related to Grant HCP 17-24.
- b. Will arrange for purchases and installation of materials, supplies, equipment, etc. per the terms of the grant.
- c. Will provide cash and in-kind services to serve as match per grant requirements.
- d. Will provide all required documentation needed to prepare invoices, including documentation of all required match, to Powell and Seiler Accounting for preparation of invoice.

The COUNTY:

- a. Shall confirm all invoices for accuracy and compliance with grant requirements.
- b. Shall process and pay invoices up to a total of \$76,500 from the County Capital Improvements Fund (Fund #125) related to grant HCP 17-24 received and signed by the PORT.
- c. Shall submit invoices to the State for processing.

2. Time of Performance:

The effective date of this contract shall be the date the parties sign and complete execution of the contract. The termination date of the contract shall be June 30, 2017.

3. Evaluation and Monitoring:

- a. The PORT shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this AGREEMENT. The PORT will retain all books, records, documents and other material relevant to this AGREEMENT for six (6) years after expiration of the AGREEMENT.
- b. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the PORT with respect to all matters covered in this AGREEMENT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this AGREEMENT. These rights shall last for six (6) years after expiration of the AGREEMENT, or from the date final payment hereunder is made, whichever is later.

4. Public Records Act

This AGREEMENT and all public records associated with this AGREEMENT shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the PORT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the PORT agrees to make them promptly available to the COUNTY. If the PORT considers any portion of any record provided to the COUNTY under this AGREEMENT, whether in electronic or hard copy form, to be protected from disclosure under law, the PORT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the PORT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the PORT (a) of the request and (b) of the date that such information will be released to the requester unless the PORT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the PORT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the PORT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the PORT for releasing records not clearly identified by the PORT as confidential or proprietary. The COUNTY shall not be liable to the PORT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

5. Employment Relationships

The PORT, its employees or agents performing under this AGREEMENT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the PORT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the PORT.

6. Mutual Indemnity

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

In the event of any concurrent act or omission of the parties, each party shall pay its proportionate share of any damages awarded. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot

agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this AGREEMENT.

7. Insurance

Without limiting the COUNTY'S indemnification of the PORT, and prior to commencement of this AGREEMENT, the PORT shall obtain, provide and maintain during the term of this AGREEMENT, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- a. General Liability Insurance. The PORT shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- b. Professional Liability (Errors & Omissions) Insurance. The PORT shall maintain professional liability insurance that covers the services to be performed in connection with this AGREEMENT, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and the PORT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this AGREEMENT.
- c. Workers' Compensation Insurance. The PORT shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this AGREEMENT shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow the PORT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. The PORT hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The PORT agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that the PORT's policy shall so state.

8. Entire AGREEMENT

This AGREEMENT represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any parties hereto.

9. AGREEMENT Modifications

The COUNTY and the PORT may, from time to time, request changes in services being performed under this AGREEMENT. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this AGREEMENT. It is mutually

agreed and understood that no alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding. For example and without limitation, an amendment to this AGREEMENT must be approved in writing by the PORT prior to the COUNTY expending funds for the items covered within that amendment. Costs incurred by the COUNTY in contravention of this Paragraph are the sole responsibility of the COUNTY.

10. Termination of AGREEMENT

The PORT and the COUNTY shall each retain the right to terminate this AGREEMENT at any time and for any reason by submitting written notice of its intention to the other party at least thirty (30) days prior to the specified effective date of such termination. In addition, the COUNTY shall have the right to terminate this contract on ten days communicated written notice if the PORT has violated any of the provisions herein, or if the COUNTY deems the PORT'S performance of its responsibilities herein identified to be substantially unsatisfactory. In either event, on the termination of this AGREEMENT, all finished and unfinished documents and work papers prepared by the PORT pursuant to this AGREEMENT shall, at the option of the COUNTY become its property, and the PORT will be paid for services performed up to the date of the AGREEMENT termination. Notwithstanding the above, the PORT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the AGREEMENT by the PORT. The COUNTY may withhold any payment to the PORT for the purposes set forth until such time as the exact amount of damages due to the COUNTY from the PORT is determined.

11. Special Provision

The failure of the COUNTY to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

12. Severability

In the event any provision, or any portion thereof, contained in this AGREEMENT is held to be unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

13. Dispute Resolution

Except as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the PORT, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

14. Governing Law and Venue

This AGREEMENT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this AGREEMENT.

15. Costs and Attorney Fees

In the event legal action is brought with respect to this contract, the prevailing party shall be awarded its costs and attorney's fees in an amount to be determined by the Court as reasonable.

16. Administration

The following individuals are designated to co-administer this AGREEMENT. They shall also serve as their respective party's contact person for any and all communications relative to this AGREEMENT.

For the COUNTY: Paul Plakinger, Budget and Fiscal Analyst
P.O. Box 6
South Bend, WA 98586
Telephone: (360) 875-9334
pplakinger@co.pacific.wa.us

For the PORT: Guy Glenn, Manager
Port of Chinook
3888 State Route 101
Chinook, WA
Telephone: (360) 642-3143
gglenn@portofilwaco.org

For the FRIENDS: Eileen Wirkala, President
Friends of Chinook School
POB 243
Chinook, WA 98614
Telephone: (360) 777-8211
UBtimber@aol.com

IN WITNESS WHEREOF, the COUNTY, the PORT, and the FRIENDS have executed this AGREEMENT on the date(s) so noted below.

PORT OF CHINOOK

**BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON**

Guy Glenn, Manager

Frank Wolfe, Chair

FRIENDS OF CHINOOK SCHOOL

Lisa Ayers, Commissioner

Eileen Wirkala, President

Steve Rogers, Commissioner

APPROVED AS TO FORM:

ATTEST:

Prosecutor's Office

WSBA#

Marie Guernsey
Clerk of the Board

Date