

K22-045

**INTERLOCAL AGREEMENT REGARDING
THE LOCAL GOVERNMENT REVIEW OF THE
PORT OF MOSES LAKE'S CRAB CREEK RAILROAD BRIDGE PROJECT**

THIS AGREEMENT (the "**Agreement**"), dated this 10th day of February, 2022, is made pursuant to Ch. 39.34 RCW, by and between the PORT OF MOSES LAKE, a Washington municipal corporation (the "**Port**"), GRANT COUNTY, a political subdivision of the State of Washington (the "**County**"), and the CITY OF MOSES LAKE, a Washington city (the "**City**"). The Port, the County, and the City are collectively known as the "**Parties**".

WHEREAS, the Port is evaluating a project to realign the railroad to restore rail access to the Port of Moses Lake/Grant County International Airport (the "**Airport**") and provide new rail service to industrial-zoned lands adjacent to the Airport and along the Wheeler Industrial Corridor (the "**Realignment Project**"). This railroad realignment is part of the Port's Northern Columbia Basin Railroad Project;

WHEREAS, part of the Realignment Project would consist of construction of two new rail line segments, and the acquisition of and refurbishment of an existing, unused third rail segment. Because the Port's Realignment Project crosses both County and City jurisdictions, a separate Interlocal Agreement will govern the Port, County, and City roles and responsibilities in the overall permitting of the Realignment Project;

WHEREAS, another part of the Realignment Project would consist of construction of a new bridge over Parker Horn and Crab Creek, as depicted in **Exhibit "A"** attached hereto (the "**Crab Creek Bridge Project**") and the parties have determined a separate Interlocal Agreement would be beneficial for the permitting of the **Crab Creek Bridge Project**;

WHEREAS, the proposed **Crab Creek Bridge Project** would be located along the boundary of the City's jurisdictional limits, near its boundary with the County;

WHEREAS, the City and County have reviewed their respective shoreline master programs and concur that the City of Moses Lake Shoreline Master Program is the shoreline master program that is applicable to the **Crab Creek Bridge Project** area;

WHEREAS, where a proponent's project may impact a waterbody, the proponent must complete a Joint Aquatic Resources Permit Application ("**JARPA**") form and submit the JARPA to the appropriate permitting agencies in order to apply for certain federal, state, and local permits and approvals;

WHEREAS, due to the **Crab Creek Bridge Project's** proximity to the shoreline of Crab Creek, a JARPA must be submitted, in part, for local permits and authorizations;

WHEREAS, the Port has resources to complete and submit a JARPA to local, state, and federal agencies, as applicable;

WHEREAS, the City has consultants contracted through its Community Development Department who are able and willing to conduct a timely review of the Port's JARPA in conformance with the City's Shoreline Master Program;

WHEREAS, Ch. 86.12 RCW establishes the law in Washington with regard to floodplain management. State control of floodplain management is assumed, however, statewide floodplain management regulation is to be exercised, in part, through local governments' administration of the national flood insurance program regulations;

WHEREAS, the City has adopted Ch. 18.53 City of Moses Lake Municipal Code governing Flood Hazard Areas (the "Flood Hazard Code"), which applies to all areas of special flood hazard within the jurisdiction of the City of Moses Lake. These regulations adopted "The Flood Insurance Study for Grant County, Washington and Incorporated Areas," dated February 18, 2009, that was conducted by the Federal Emergency Management Agency ("**FEMA**") (the "Flood Insurance Study"). Moreover, the Flood Hazard Code provides that the City Building Official is appointed to administer and implement it;

WHEREAS, the **Crab Creek Bridge Project** is located in a Special Flood Hazard Area ("**SFHA**") that was established as part of the Flood Insurance Study;

WHEREAS, modeling shows that the proposed **Crab Creek Bridge Project** will result in an increase to the Base Flood Elevation ("**BFE**"), as that term is defined by FEMA, by 0.14 feet;

WHEREAS, any proposed project that encroaches upon a floodway and causes an increase to the BFE of greater than 0.0 feet requires FEMA to issue a Conditional Letter of Map Revision ("**CLOMR**"). A project proponent must request that FEMA issue a CLOMR and compile a data submittal in support of that request;

WHEREAS, a CLOMR does not revise an effective Flood Insurance Rate Map ("**FIRM**"). FEMA may follow a CLOMR by issuing a Letter of Map Revision ("**LOMR**"), which is an official revision to the currently effective FIRM. A LOMR changes flood zones and BFEs;

WHEREAS, the City has staff and consultants through its Community Development Department who are able and willing to act as the local Floodplain Administrator ("**FPA**") for (i) submittal of the CLOMR materials to FEMA and (ii) any submittal to the Washington State Department of Ecology, as applicable; and

WHEREAS, the Parties recognize the continued importance of cooperating on the Crab Creek Bridge Project because it would support commerce and economic growth opportunities for each of the Parties.

THEREFORE, for and in consideration of the mutual terms and conditions contained herein, the Parties hereby agree as follows:

1. **Purpose.** This Agreement memorializes the Parties' agreement concerning the Port's agreement to bear the costs of the Project's permitting requirements, the City's review of the Port's JARPA for the **Crab Creek Bridge Project**, the County's concurrence in the City's review, and the Parties' agreement to cooperate on the Crab Creek Bridge Project. This cooperation will include, without limitation, the County's concurrence in the outcome of the City's review and issuance of permits and/or approvals under the City's Shoreline Master Plan.
2. **Local Government JARPA Review.** Subject to the terms and conditions set forth herein, the City agrees to conduct the review of the Port's JARPA for local government shoreline permits and/or approvals, including but not limited to, a Shoreline Substantial Development Permit or a Shoreline Variance for the **Crab Creek Bridge Project**. Subject to

the terms and conditions set forth herein, the County concurs in the City conducting such review and agrees to support the City's issuance of such permits and/or approvals.

3. **CLOMR Process.** Subject to the terms and conditions set forth herein, the City agrees to act as the local FPA for submittal of CLOMR materials to FEMA for the ***Crab Creek Bridge Project***. The City shall review the hydraulic analysis and CLOMR application and reserves the right to engage a technical specialist to perform an independent review of said materials. The City shall be responsible for all correspondence and engagement with FEMA concerning the CLOMR request, including but not limited to any revision to the BFE through the CLOMR or LOMR process. Furthermore, the Parties agree that the City shall support the application for a variance under the National Flood Insurance Program ("***NFIP***") for the increase in BFE for the Crab Creek Bridge Project.

4. **Public Notifications.** The Port shall develop a public information and notification program related to project planning and construction activities and schedule for the ***Crab Creek Bridge Project***. This public information and notification program shall be initiated as part of the overall Realignment Project public outreach program, which is outlined in the separate Interlocal Agreement for the Realignment Project.

5. **Costs.** The Port shall remain responsible for all of the costs of completing the JARPA and any other steps necessary for submitting the JARPA to any federal and/or state agencies, as the case may be, as well as the cost of compiling the CLOMR materials and requesting any variance under the NFIP. The City's review of the Port's JARPA materials and CLOMR application (including supporting materials and independent review of the hydraulic analysis) will be conducted subject to the City's usual and customary fees and charges for such review. In addition, the Port will reimburse the City for all fees associated with specialized technical review of the CLOMR materials by consultants.

6. **Agreement Administration.** This Agreement shall be administered by the County's Director of Development Services the City's Community Development Director, and the Port's Director of Facilities. Any notice under this Agreement shall be sent, postage pre-paid, by regular mail, or delivered personally. Any notice so posted shall be deemed received two (2) business days after the date of mailing. Notices shall be mailed or delivered to the following persons at the following addresses:

GRANT COUNTY
Director of Development Services
264 W. Division Avenue
P.O. Box 37
Ephrata, WA 98823

CITY OF MOSES LAKE
Community Development
Director
321 S. Balsam Street
P.O. Box 1579
Moses Lake, WA 98837

PORT OF MOSES LAKE
Director of Facilities
7810 Andrews N.E. Suite 200
Moses Lake, WA 98837

7. **Independent Governments; No Liability.** Each Party is and shall remain an independent government. This Agreement does not create a partnership or other similar arrangement. No agent, employee or representative of any Party shall be deemed to be an

agent, employee, or representative of any other Party for any purpose, and the employees of a Party are not entitled to any of the benefits the other Parties provide to its employees. Each Party shall be responsible for the wrongful or negligent actions of its respective public officials, employees, or agents while engaged in the performance of duties under this Agreement as their respective liability shall appear under the laws of the State of Washington and/or Federal Law and this agreement is not intended to diminish or expand such liability.

8. **Indemnification.** Each party shall indemnify and hold harmless the others, its officers, agents, elected officials, appointed officials, and employees from all liability, loss of damage, including costs of defense they may suffer as a result of claims, demands, actions, damages, costs of judgements which result from each party's own intentional or negligent acts relating to services provided pursuant to this Agreement. In the event that more than one party is negligent in a matter arising out of the activities of the parties pursuant to this Agreement, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses including costs and reasonable attorney's fees.

9. **Dispute Resolution.** The Parties shall attempt to resolve all claims, disputes, and other matters in question, arising out of, or related to, this Agreement, first through informal discussions and then through formal written notification and cure, before resorting to litigation.

10. **Severability.** In the event any term or condition contained in this Agreement or application thereof to any person or circumstance is held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or condition hereof, and the parties will reasonably cooperate to modify this Agreement to achieve the purposes set forth herein.

11. **Term.** This Agreement shall be effective when signed by the duly authorized governing bodies of the County, the City, and the Port, and shall remain in full force and effect until the purposes set forth herein are achieved, or until modified or terminated by mutual agreement of the Parties, whichever occurs first.

12. **Modifications.** This Agreement may be amended and modified by a written agreement signed by the Parties, in the same manner as the signing of the original Agreement.

13. **Waiver.** No failure by the Parties to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver or breach of any other term or condition of this Agreement.

14. **Governing Laws.** This Agreement and the rights of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the Parties agree that in any such action, jurisdiction and venue shall lie exclusively in Grant County, Washington.

15. **No Third-Party Beneficiaries.** This Agreement is intended to be enforceable only by the County, the City, and the Port. There are no third-party beneficiaries to this Agreement.

16. **Counterparts and Electronic Transmission.** This Agreement may be signed in counterparts. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission shall be the same as delivery of an original document.

17. **Entire Agreement.** This Agreement contains all terms and conditions agreed upon by the parties on the issues covered by it, except as supplemented by subsequent written agreements made by the Parties. All prior negotiations and draft written agreements are merged into and superseded by this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

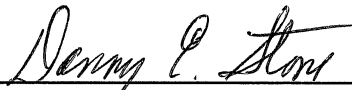
18. **Execution.** The persons signing below represent and warrant that they have the requisite authority to bind the Party on whose behalf they are signing.

19. **Compliance with Laws.** Each Party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.

20. **Maintenance of Records.** Each Party hereto agrees to maintain books, records, and documents using accounting procedures which accurately reflect all direct and indirect costs related to the performance of services described herein. Each Party may examine the other Party's books and records to verify the accuracy of invoices and performance of services. Each Party's fiscal management system shall include the capability to provide accurate and complete disclosure of all costs invoiced under this Agreement. All books, records, documents and other materials relevant to this agreement will be retained in accordance with the Washington State records retention schedules, and the Office of the State Auditor and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third parties.

IN WITNESS HEREOF, the County, the City, and the Port have caused this Agreement to be executed in their names and to be attested by their duly authorized officers on the dates written below.

GRANT COUNTY BOARD OF COMMISSIONERS

By: 
Danny Stone, Chair

Date: March 8, 2022


By: 
Rob Jones, Vice Chair

Date: March 8, 2022

By: 
Cindy Carter, Member

Date: 8 March 22

CITY OF MOSES LAKE

By: 
Allison Williams, City Manager

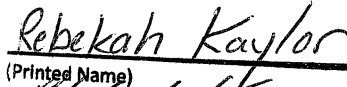
Date: 2022-02-10


PORT OF MOSES LAKE

By: 
Don Kersey, Executive Director

Date: 2022-02-24

Approved as to form:


(Printed Name)

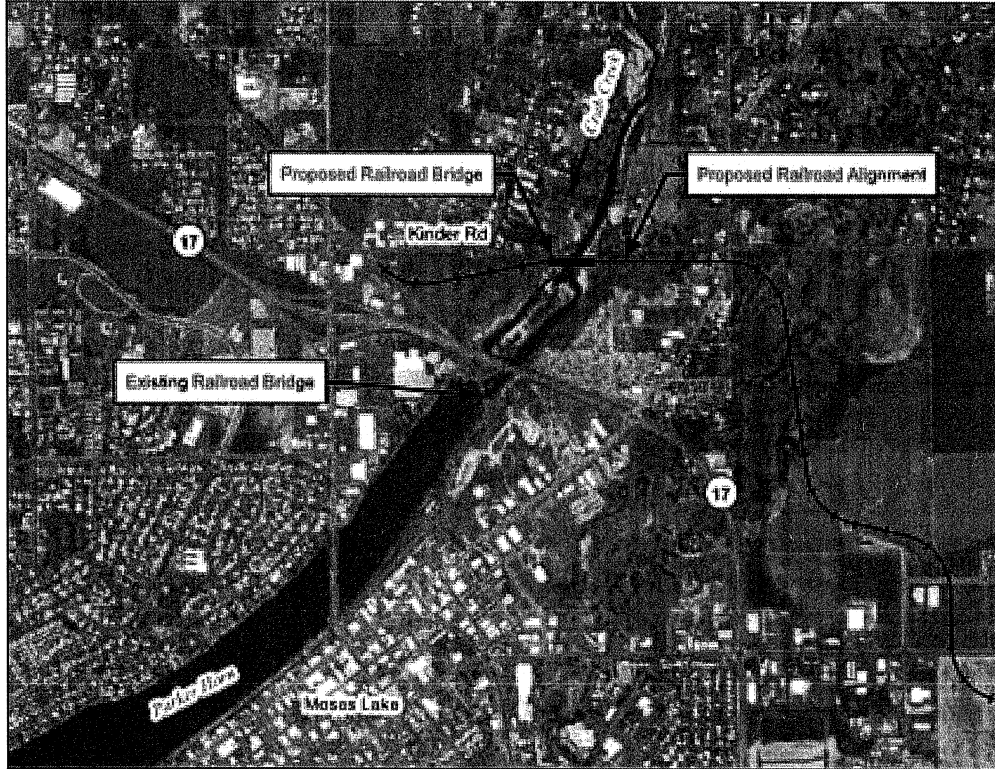

(Signed)

Deputy Prosecuting Attorney

Date: 3/8/22

EXHIBIT "A"

DEPICTION OF CRAB CREEK BRIDGE PROJECT



Signature Certificate

Reference number: NERC1-09WBY-KL3XM-KNXF6

Signer

Timestamp

Signature

Allison Williams

Email: awilliams@cityofml.com

Sent: 10 Feb 2022 23:10:17 UTC
Viewed: 10 Feb 2022 23:46:49 UTC
Signed: 10 Feb 2022 23:47:06 UTC



IP address: 63.135.54.162
Location: Moses Lake, United States

Don Kersey

Email: dkersey@portofmoseslake.com

Shared via link

Sent: 10 Feb 2022 23:10:17 UTC
Viewed: 24 Feb 2022 18:17:55 UTC
Signed: 24 Feb 2022 18:19:03 UTC



IP address: 66.172.112.13
Location: Moses Lake, United States

Document completed by all parties on:
24 Feb 2022 18:19:03 UTC

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Signed with PandaDoc

PandaDoc is a document workflow and certified eSignature solution trusted by 30,000+ companies worldwide.



BOARD OF COUNTY COMMISSIONERS
Grant County, Washington

**RESOLUTION AUTHORIZING
EXECUTION OF INTERLOCAL
AGREEMENT BETWEEN GRANT
COUNTY, PORT OF MOSES LAKE AND
CITY OF MOSES LAKE FOR THE
CRAB CREEK RAILROAD BRIDGE
PROJECT**

RESOLUTION No. 22-027-CC

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, permits local governmental entities to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, for the purposes of providing services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Grant County, Washington, by and through its Board of County Commissioners, Port of Moses Lake and City of Moses Lake, created and situated within the State of Washington, are vested with authority to enter into an intergovernmental agreement pursuant to chapter 39.34 RCW; and

WHEREAS, it is the desire of Grant County, Port of Moses Lake and City of Moses Lake to enter into an interlocal agreement relating to the Crab Creek Railroad Bridge project.

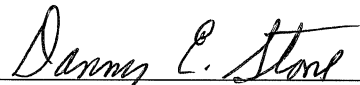
NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Interlocal Agreement relating to the Crab Creek Railroad Bridge Project be executed between Grant County, the Port of Moses Lake and the City of Moses Lake.

DATED this 8th day of March, 2022.

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, WASHINGTON**

Yea Nay Abstain

☒ ☐ ☐




Danny E Stone, Chair

☒ ☐ ☐



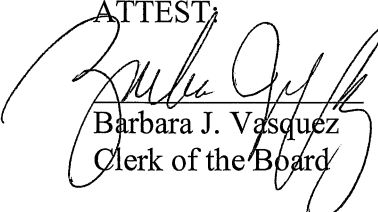
Rob Jones, Vice-Chair

☒ ☐ ☐



Cindy Carter, Member

ATTEST:



Barbara J. Vasquez
Clerk of the Board