

INTERLOCAL AGREEMENT FOR EQUIPMENT

This agreement is made pursuant to RCW 39.34.010 between the Port of Moses Lake, a Washington municipal corporation ("Port") and the City of Moses Lake, a Washington municipal corporation ("City"). Port and City are individually a "Party" and collectively the "Parties"

WHEREAS, each Party owns certain equipment, machinery and vehicles (the "Equipment") and provides services that may be useful to the other Party for public works construction, operations, maintenance and related activities.

WHEREAS, the Parties agree that sharing Equipment promotes the cost-effective and efficient use of public resources.

WHEREAS, the parties desire to enter into an agreement to establish procedures for sharing Equipment and defining legal relationships and responsibilities.

NOW THEREFORE, in consideration of the mutual obligations and benefits herein the Parties agree as follows:

1. **Providing Equipment.** Equipment may be provided upon reasonable request at mutually convenient times and locations. The Party providing the Equipment (the "Provider") retains the right to accept, condition or decline the request in its sole discretion.
2. **Receiving Equipment.** The Party receiving the Equipment (the "User") shall take reasonable and prudent precaution in its operation, storage and maintenance. The Equipment shall be used only for its intended purpose. The User shall permit the Equipment to be used only by properly trained and supervised operators and shall be responsible for Equipment repairs necessitated by misuse or negligent operation. User shall perform, and document required maintenance checks prior to use and after use and shall provide routine daily maintenance of equipment during the period in which the equipment is in the User's possession. User shall not, however, be responsible for scheduled maintenance or repairs other than repairs necessitated by misuse or negligent operation.
3. **Condition of Equipment.** The Provider shall use its best efforts to provide Equipment in good working order and to inform the User of any information reasonably necessary for the proper operation of the Equipment. However, the Equipment is provided and accepted "as is", with no representation or warranties, including without limitation, its fitness for a particular purpose. The User shall be solely responsible for selecting the proper Equipment for its needs and inspecting Equipment prior to use. It is acknowledged by the parties that the Provider is not in the business of selling, leasing, renting or otherwise providing equipment to others and that the Parties are acting only for their mutual convenience and efficiency.

4. Equipment Operators. The Provider may, in its sole discretion, require that Equipment be operated only by Provider's personnel. The Provider will use its best efforts to achieve the project goals of the User but shall retain full control over the manner and means of using the Equipment. In such a case, the Provider shall be responsible for any damage to the Equipment

5. Payment. No monetary considerations required as a result of the City of Moses Lake using the van for a mutually beneficial activity. City will bring van back full of gas.

6. Independent Governments. Each Party is and shall remain an independent government. This Agreement does not create a partnership or other similar arrangement. Nothing herein shall alter the employment status of any personnel providing services under this Agreement. Such personnel shall not be deemed "loaned employees" and shall at all times continue to be subject to all standards of performance, disciplinary rules and other terms and conditions of their employer. Neither User shall be responsible for the direct payment of any salaries, wages, compensation or benefits for Providers' workers performing services to User under this Agreement.

7. No Consequential Damages. Neither Party shall be liable to the other Party for consequential damages to the other Party arising out of providing or using Equipment or personnel under this Agreement.

8. Mutual Defense Indemnification and Hold Harmless. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other from any claims, cause of action or damages to the extent and in proportion such claims, cause of action or damages arise from the acts or omissions of the indemnifying Party or its employees.

9. Limited Waiver of Immunity Under Washington State Industrial Insurance Act, Title 51 RCW And Other Similar Industrial Insurance Schemes. For purposes of the foregoing indemnification provision, and only to the extent of claims against one Party by the employees of the other Party, the Parties specifically waive any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third-party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

10. Damage to Equipment. The Provider will provide property damage insurance coverage for the loss or damage to the Provider's Equipment. Except as provided herein, each Party waives any claim against the other Party for any damage covered by insurance. The policies of insurance, to the extent permitted by the insurance carrier, will waive any right of subrogation. The User will be responsible for the deductible if the damage occurs while Equipment is in the User's possession no matter the cause.

11. **Liability Insurance.** Each Party shall maintain liability insurance covering personal injury and property damage to third parties in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with a deductible of no more than \$25,000. Each party will provide evidence that the other Party is endorsed as an "additional insured" under their respective liability policies. The User will be considered a permissive user under the Provider's liability policies; however, the User's liability insurance coverage will be considered primary. The policies of insurance, to the extent permitted by the insurance carrier, will waive any right of subrogation. The User will be responsible for the deductible if the liability occurs while Equipment is the User's possession no matter the cause.
12. **Laws and Regulations.** User agrees to conform to and abide by all applicable rules, codes, laws, regulations and Provider policies provided to the User in connection with its use of the Equipment.
13. **Termination.** Either Party may terminate this Agreement by providing thirty (30) days written notice to the other party. Any amounts due and owing by a terminating Party shall continue shall be paid within thirty (30) days of termination.
14. **Survival.** All obligations of this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.
15. **Governing Law:** This Agreement, and the right 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 the county of the Provider.
16. **Attorney Fees-Agreement Enforcement.** The prevailing Party in any action to enforce any term or condition of this Agreement shall be entitled to an award of their reasonable costs and attorney fees.
17. **True and Full Value.** The compensation paid to each other herein represents "true and full value as required by RCW 43.09.210.
18. **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.
19. **Effective Date.** This Agreement will be effective upon the date of the last Party to execute.
20. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

21. Interpretation. Each party has participated in drafting this Agreement and has had this Agreement review by legal counsel. Therefore, any language herein shall not be construed against either Party on the basis of which Party drafted the particular language.

22. Entire Agreement: This Agreement contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Agreement which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a written modification to this Agreement executed with both Parties.

THIS AGREEMENT CONTAINS INDEMNIFICATIONS FROM THE LESSEE TO THE LESSOR, REAGREEMENTS BY THE LESSEE AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES

PORT OF MOSES LAKE



By: Jeffrey Bishop
Its: Executive Director

Date: 9/13/18

CITY OF MOSES LAKE



By: James Williams
Its: City Manager

Date: 9-13-18