

INTERGOVERNMENTAL COOPERATION AGREEMENT

between

the City of Port Angeles and the Port of Port Angeles

Regarding

National Wildlife Federation v. Federal Emergency Management Agency Litigation

THIS AGREEMENT (the "Agreement") is entered into pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) between the City of Port Angeles (the "City") and the Port of Port Angeles (the "Port"). The City and the Port are municipal corporations under the laws of the state of Washington.

**RECITALS**

WHEREAS, RCW 39.34.080 provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; and

WHEREAS, the National Wildlife Federation (NWF) filed a lawsuit against the Federal Emergency Management Agency (FEMA) asking for relief that could limit or prohibit new development or substantial redevelopment in the Puget Sound region; and

WHEREAS, the relief sought in the lawsuit could effectively halt nearly all development or redevelopment of floodplain owned or controlled by the Port of Port Angeles; and

WHEREAS, the City of Port Angeles is one of 16 Washington municipalities that have joined in the lawsuit in opposition to NWF's lawsuit; and

WHEREAS, the Port supports the City's position in opposition to an injunction but does not wish to incur the legal expense involved in seeking to independently and separately intervene, but through intergovernmental agreement, wishes to participate with the City in the cost of opposing NWF's motion for an injunction.

NOW, THEREFORE, in consideration of the mutual benefits derived by entering into this Agreement and for other good and valuable consideration, the Port and City agree as follows:

1. **Payment.** The Port agrees to pay to the City one-half, but not to exceed \$2,500.00, of the expense the City incurs in opposing NWF's lawsuit in United States District Court Western District of Washington Case No. 2:11-cv-02044-RSM. The obligation of the Port is limited to payment of one-half the amount the City pays on account of attorney fees, expert witness costs, hearings and preparation for hearings, settlement negotiations, trial and preparation for trial, and the expenses of discovery, but not payments for other purposes.

The City will send an itemized monthly statement to the Port outlining the services rendered, and the Port shall pay the invoice within 30 days of receipt.

2. **Term of Agreement.** The effective date of this Agreement shall be as dated with signatures. This Agreement shall terminate upon the first to occur of: resolution of the lawsuit; withdrawal of the City in connection with the lawsuit; or \$2,500 agreed upon match payment from the Port.

3. **Limited Role of Port.** The parties recognize and agree that, by entering into this agreement, the Port does not become a party to the lawsuit and the Port's maximum liability under this agreement is \$2,500 payable only to the City and not to any other person or entity.

4. **Control of Process.** The City retains sole discretion to determine scope and extent of its participation in the lawsuit, including the right to withdraw. The City shall provide the Port with copies of all pleadings when filed by the City in connection with the lawsuit. If the City is awarded its attorney fees in connection with the lawsuit, the City shall reimburse the Port for all payment made by the Port under this Agreement. This provision 3 shall survive the termination of this Agreement.

5. **Assignment.** Neither party to this Agreement may assign its interest in this Agreement without the express consent of the other party, which consent shall not unreasonably be withheld.

6. **Binding Effect.** All terms and conditions of this Agreement shall inure to the benefit of and shall bind, as the case may be, not only to each of the parties hereto but also to their respective heirs, successors, administrators and assigns.

7. **Independent Entities.** Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Port, and its contractors and employees, will at all times remain an “independent contractor” with respect to the services to be performed under this Agreement.

8. **Listing.** Pursuant to RCW 39.34.040, this Agreement shall be listed on the Port’s and the City’s web sites.

9. **Administration.** No separate legal entity is created by this Agreement. This Agreement shall be administered by a joint board consisting of one (1) representative of the City and one (1) representative of the Port. The representative of the Port shall be the Executive Director, or his designee, at 360-457-8527 and the City’s representative shall be the City Manager, or his designee at 360-417-4501.

10. **Performance waiver.** The failure of either party to act with respect to a breach by the party does not waive its right to act with respect to subsequent or similar breaches. The failure of either party to exercise or enforce any right or provision will not constitute a waiver of such right or provision.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the City and the Port for the use of funds received under this Agreement, and it supersedes all prior communications and proposals, whether electronic, oral or written, between the City and the Port with respect to this Agreement.


12. **Dispute Resolution.** If a dispute arises out of this Agreement, the parties shall first attempt in good faith to resolve the matter through negotiation. If negotiation is not successful, the parties agree to attempt to settle the matter by mediation. The cost of mediation shall be equally borne by the parties. In any legal action brought to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to award of its reasonable attorney fees and costs. Venue for any such action shall be the Superior Court of the State of Washington in and for the County of Clallam. This provision shall survive termination of this Agreement.

13. **No Third Party Benefits.** The parties to this Agreement do not intend to confer on any third parties any benefits derived from or arising under this Agreement. No third party may


utilize any provision of this Agreement as a third party beneficiary or for any other purpose.

IN WITNESS WHEREOF, the City and Port have executed this Agreement as of the date and year last written below.

**CITY OF PORT ANGELES**

By:   
Title: City Manager  
Date: 4/24/2012

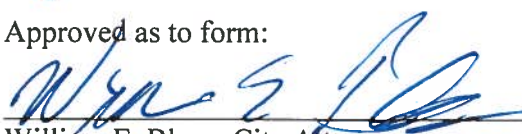
**PORT OF PORT ANGELES**

By:   
Title: Executive Director  
Date: 4-24-12

Attest:

  
Janessa Hurd, City Clerk

Approved as to form:

  
William E. Bloor, City Attorney

# Port of Port Angeles

*Port Angeles, Washington*

**Commissioners' Resolution No. 12-1032**

A RESOLUTION AUTHORIZING THE ESTABLISHMENT OF AN INTERLOCAL AGREEMENT BETWEEN THE PORT OF PORT ANGELES AND THE CITY OF PORT ANGELES REGARDING LITIGATION EXPENSES

WHEREAS, the Port of Port Angeles ("Port") is a municipal corporation of the State of Washington; and

WHEREAS, the City of Port Angeles ("City") is a municipal corporation of the State of Washington; and

WHEREAS, City has intervened in the matter of National Wildlife Foundation v. Federal Emergency Management Agency, United States District case number 2:11-cv-02044-RSM (the 'lawsuit'); and

WHEREAS, the lawsuit could result in issuance of an injunction to prohibit the sale of floodplain insurance policies for new development or substantial redevelopment in the Puget Sound region, which could effectively halt nearly all development on floodplain property owned or controlled by the Port; and

WHEREAS, the Port supports the City's position in opposition to an injunction in the lawsuit; and

WHEREAS, it is more cost-effective for the Port to provide financial support toward the City's litigation expenses in the lawsuit than it is for the Port to independently intervene in the lawsuit;

**NOW THEREFORE,**

**BE IT RESOLVED by the Port of Port Angeles:**

1. The Port Executive Director is authorized and directed to negotiate and execute an Interlocal Agreement with the City, under which the Port will match the City's legal expenses related to the lawsuit in an amount not to exceed \$2,500.00.
2. This Resolution shall be liberally construed to effect its purposes.

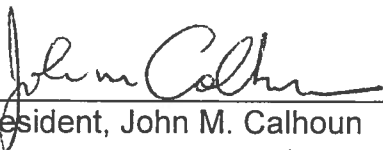
# Port of Port Angeles

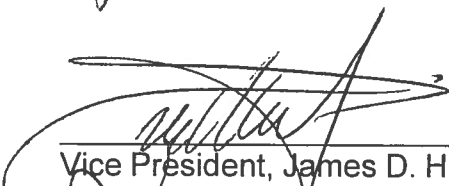
*Port Angeles, Washington*

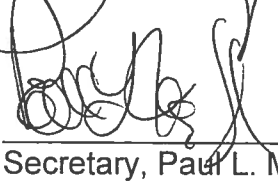
**Commissioners' Resolution No.** 12-1032 (cont'd)

ADOPTED by the Port Commission of the Port of Port Angeles this 27<sup>th</sup> day of February, 2012.

PORT OF PORT ANGELES  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
President, John M. Calhoun

  
\_\_\_\_\_  
Vice President, James D. Hallett

  
\_\_\_\_\_  
Secretary, Paul L. McHugh