

RESOLUTION NO. 2423

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A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF KELSO TO PROVIDE STORMWATER SOURCE CONTROL INSPECTION SERVICES

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WHEREAS, Kelso and Longview are public agencies as defined by Ch. 39.34 of the Revised Code of Washington (“RCW”), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide service and facilities in the manner and pursuant to forms of governmental organization that will accord best with the geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, both Kelso and Longview are NPDES Phase II stormwater permittees required to meet Federal Clean Water Act requirements as administered by the Washington Department of Ecology; and

WHEREAS, the 2019 NPDES permit requires municipal permittees to develop and implement a program to inspect pollutant generating sources at publicly and privately owned institutional, commercial and industrial sites and require the application of pollution source control best management practices; and

WHEREAS, Kelso desires to utilize the resources of Longview to assist Kelso in performing stormwater source control inspections for sites in its jurisdiction; and

WHEREAS, Kelso has agreed to compensate Longview for performing these services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Longview as follows:

1. Section 1. The City Manager is authorized to execute the agreement with the City of Kelso, Washington to provide stormwater source control inspection services upon request by the City of Kelso, which agreement is provided as ATTACHMENT A, and forming a part of this Resolution.

PASSED by the City Council of the City of Longview, Washington, and approved by its Mayor at a meeting of said City Council held on the 17<sup>th</sup> day of November 2022.

Maryalice Valles  
MAYOR

ATTEST:

Jeffery Distrein  
City Clerk

INTERLOCAL AGREEMENT BETWEEN  
THE CITIES OF LONGVIEW AND KELSO, WASHINGTON  
RELATING TO STORMWATER SOURCE CONTROL  
INSPECTION SERVICES

THIS INTERLOCAL AGREEMENT, hereinafter “Agreement”, is entered into between the CITY OF LONGVIEW, WASHINGTON, hereinafter “Longview”, and the CITY OF KELSO, WASHINGTON, hereinafter “Kelso”.

WHEREAS, Kelso and Longview are public agencies as defined by Ch. 39.34 of the Revised Code of Washington (“RCW”), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide service and facilities in the manner and pursuant to forms of governmental organization that will accord best with the geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, both Kelso and Longview are NPDES Phase II stormwater permittees required to meet Federal Clean Water Act requirements as administered by the Washington Department of Ecology; and

WHEREAS, the 2019 NPDES permit requires municipal permittees to develop and implement a program to inspect pollutant generating sources at publicly and privately owned institutional, commercial and industrial sites and require the application of pollution source control best management practices; and

WHEREAS, Kelso desires to utilize the resources of Longview to assist Kelso in performing stormwater source control inspections for sites in its jurisdiction; and

WHEREAS, Kelso has agreed to compensate Longview for performing these services.

NOW THEREFORE, in consideration of the terms and provisions contained herein, it is agreed between Kelso and Longview as follows:

1. Purpose. It is the purpose of this Agreement to establish the framework, roles, and responsibilities in order to have Longview perform stormwater source control inspection services for the City of Kelso for payment.
2. Services-Generally.
  - 2.1 Approval and Priority. All services provided by Longview to Kelso, as detailed in this Agreement, will be performed by Longview Department of Public Works staff (“Longview Staff”) as approved and directed by the Longview Public Works Director (“Longview Director”) and subsequent to regularly assigned duties for Longview staff.

2.2 Joint Procedures. Both parties shall develop mutually agreeable procedures for the notification, transmittal, review, and communication regarding the services performed under this Agreement. The parties will periodically review these procedures and confer as needed to address any issues that arise in the administration of this Agreement. In the event of a dispute regarding the interpretation, application, or performance of these procedures or this Agreement, the City Managers of each party shall meet to attempt to resolve the dispute prior to the dispute resolution process set out in Paragraph 10.2.

- 3 Inspection Services. Longview staff shall perform stormwater source control inspections of publicly and privately-owned institutional, commercial and industrial sites located in the City of Kelso, upon request. The governing codes used for inspections shall be those adopted by Kelso within Chapter 13.09 of the Kelso Municipal Code, as amended.

Policies and procedures shall be established and agreed upon by both parties for 1) development of Kelso's source control site inventory, 2) development of source control BMP guidance and educational materials, 3) inspection checklists and procedures, 4) scheduling of inspections and notifications thereof, 5) the regular conduct and completion of site inspections, and 6) transmittal of inspection documentation and audit results with recommended and required source control BMPs. Kelso staff shall be responsible for further dissemination of the inspection results back to the site owners/operators and all enforcement actions as required under the municipal stormwater permit. Longview Staff shall also perform reinspection of sites to assess compliance, upon request.

Kelso will be responsible for data management for all aspects of the source control program and will retain ultimate responsibility for compliance with its municipal stormwater permit.

- 4 Term of Agreement. This agreement shall become effective immediately upon ratification by both legislative bodies of the City of Kelso and the City of Longview and shall continue indefinitely unless terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.
- 5 Payment to Longview. In consideration of this Agreement and the services provided, Kelso shall pay Longview an hourly rate for all services provided under this Agreement.

5.1 Billing Statement. Longview shall submit a monthly statement to Kelso that shall contain the following:

- a. Date of service
- b. Hours of work

Payments for services rendered shall be made by Kelso each month within thirty (30) days of receipt of the billing statement from Longview.

5.2 Billing Statement Dispute. In the event that there is a dispute regarding the amount of money owed by Kelso to Longview, staff shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the disputed amount shall be placed into the registry of the Cowlitz County Superior Court until the dispute is resolved by agreement of the parties or in a court with jurisdiction over the subject matter of the dispute.

6 Ownership of Property. The parties to this Agreement do not contemplate the acquisition of any property to carry out the purposes of this Agreement. Any property owned by Kelso shall remain the property of Kelso, and any property owned by Longview shall remain the property of Longview.

7 Independent Contractor. The parties understand and agree that Longview is acting hereunder as an independent contractor and shall maintain control of all Longview employees, including but not limited to hiring, firing, discipline, evaluation, and establishment of standards of performance thereof. All Longview personnel rendering service hereunder shall be, for all purposes, employees of Longview, although they may act as officers of Kelso in the performance of services under this Agreement.

8 Termination.

8.1 Termination by Notice. This Agreement may be terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.

8.2 Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

8.3 Termination for Breach. Longview may terminate this Agreement with fourteen (14) days advance written notice upon the failure of Kelso to make payments as required by this Agreement. Kelso may terminate this Agreement upon fourteen (14) days advance written notice in the event Longview fails to provide services as required in this Agreement except disputes handled per Section 5.2.

9 Indemnification and Hold Harmless. Longview agrees to defend, indemnify, and hold harmless Kelso, and each of its employees, officials, agents, and volunteers, from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Longview or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys' fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Longview or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

Kelso agrees to defend, indemnify, and hold harmless Longview and each of its employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Kelso or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys' fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Kelso or its insurer. This provision shall survive the expiration or earlier termination of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY TO CARRY OUT THE PURPOSES OF THIS INDEMNIFICATION CLAUSE. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The rights, duties and obligations set forth in this section survive termination or expiration of this agreement.

10 Miscellaneous.

10.1. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

10.2. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Cowlitz County Superior Court, Cowlitz County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.

10.3. Assignment. Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

10.4. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each City.

10.5. Compliance with Laws. Each party agrees to comply with all local, state and federal laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

10.6. Entire Agreement. The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or

other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

10.7. Severability. If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

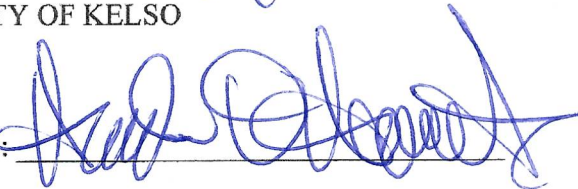
10.8. Interpretation. The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

10.9. Notice. All communications regarding this Agreement shall be sent to the parties listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail.


IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

DATED: 12/7/22

CITY OF KELSO


BY: 

CITY MANAGER

ATTEST: 

CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

DATED: 11-17-2022

CITY OF LONGVIEW

BY: Kurt N Sacha

CITY MANAGER

ATTEST: Tiffany Ostreim

CITY CLERK

APPROVED AS TO FORM:

James J. Miller  
CITY ATTORNEY