

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into effective this 20th day of March, 2017 (the “Effective Date”), by and between the PORT OF EVERETT, a Port district organized under the laws of the State of Washington (the “Port”), and the CITY OF MUKILTEO, a municipal corporation organized under the laws of the State of Washington (the “City”).

RECITALS

A. Japanese Gulch is an area within the City that is near the Port’s property historically referred to as the “Mukilteo Tank Farm.”

B. Japanese Gulch has a creek, which has restrictions, and the opportunity to “daylight” the creek would enhance local fish habitat.

C. The City is undertaking a project for the daylighting of Japanese Gulch Creek and is seeking funding opportunities for that purpose. The Port has agreed to contribute funding to the City’s project.

D. The purpose of this Interlocal Agreement is to establish the terms and conditions for the Port’s contribution of funding to the City’s project to daylight Japanese Gulch Creek.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, and pursuant to Chapter 39.34 RCW, the Port and the City agree as follows:

1. **General.** As the Project is defined below, the Port and the City agree to enter into their respective responsibilities as specified in this Agreement.

2. **Project.** The Project, which the City shall undertake, shall be the daylighting of Japanese Gulch Creek (the “Project”). The Project shall involve the following:

- (a) *Daylighting Japanese Gulch Creek and Nearshore Habitate Replacement:* Design and permitting of the Japanese Gulch Creek daylighting project to remove a portion of the existing rip-rap and stabilizing the upland bank to create an open creek channel from Possession Sound to the new First Street. Restoration would include nearshore buffer plantings and large woody debris to restore estuarine rearing habitat.
- (b) *Waterfront Promenade:* Promenade design of a 15 foot pedestrian walkway along the waterside of the Tank Farm from the Transit Center to Edge Water Beach. The design will include visual interest details such as planting islands, view overlooks, seating areas, beach access and designed as a continuous walkway along Mukilteo’s waterfront.

3. **Project Management of the Project.** The City shall be responsible for the management and control of the design, permitting, SEPA review and construction processes of the Project.

4. **Port Funding Contribution.** On condition that the City undertakes the Project and agrees to complete it, the Port shall provide a total of Two Hundred Thousand Dollars (\$200,000.00) to the City to be used for the Project. The schedule for payments by the Port shall be as follows:

- a. One Hundred Thousand Dollars (\$100,000.00) to be paid as soon as practicable after execution of this Agreement; and
- b. One Hundred Thousand Dollars (\$100,000.00) to be paid no later than March 30, 2018.

5. **No Other Port Project Responsibilities.** The Port has no other substantive Project responsibilities; provided, however, the Port will reasonably cooperate with the City in providing documentation, if requested, to support grant programs or other reasonably necessary requests for information concerning the donated monies.

6. **Indemnity.** The City shall save and hold the Port, its officials, employees, agents and assigns harmless from and against any liability, damage, cost or expense, including reasonable attorney fees and costs, resulting from claims of every kind resulting in whatsoever damage, including death which arise directly or indirectly from the subject matter of this Agreement.

7. **Insurance.** For all construction work that is done with funding provided pursuant to this Agreement, the contractor and/or the City performing construction activities shall name the Port as an additional named insured on an insurance policy or policies in a form satisfactory to the Port's Chief of Legal Affairs for approval.

8. **Miscellaneous Provisions.**

- a. **Filing:** As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force or otherwise made publicly available pursuant to RCW 39.34.040.
- b. **Validity:** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudged.
- c. **Authority:** This Agreement shall be executed on behalf of each party by its authorized representative, and pursuant to appropriate legislative action of each participating agency.

- d. No Third Party Beneficiaries. This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but limited to, any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other party hereto.
- e. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this extent and end the terms and conditions of this Agreement are declared severable.
- f. Compliance with Laws. The parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement. The parties shall obtain and comply with any and all necessary permits, approvals, consents and notice from or to all applicable jurisdictions prior to commencing any work or action related to this Agreement.
- g. Captions and Counterparts. The captions in this Agreement are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement.
- h. Integrated Agreement. This is an integrated agreement. No party has relied on any representation other than those expressly set forth herein in entering this Agreement.
- i. Notices. Any written notice required or permitted to be given herein shall be made by registered or certified U.S. mail, or by delivery in person to the Party which is the intended recipient of the notice, at the following addresses or to such other respective addresses as either Party hereto may from time to time designate in writing:

Les Reardanz
CEO/Executive Director
Port of Everett
1205 Craftsman Way, Suite 200
Everett, WA 98201

Jennifer Gregerson
Mayor
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

PORT OF EVERETT

By: Les Reardanz
Les Reardanz, CEO/Executive Director

Date: 3/29/17

CITY OF MUKILTEO

By: Jennifer Gregerson
Jennifer Gregerson, Mayor

Date: 3.21.17

ATTEST:

By: Janet Keepe
City Clerk

Date: 3-21-17

APPROVED AS TO FORM:

By: Bradford N. Carr
Bradford N. Carr, Port Attorney

Date: 3/29/17

By: Angela Summerfield
Angela Summerfield, City Attorney

Date: 3/20/2017