

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF OLYMPIA AND PORT OF OLYMPIA FOR ENVIRONMENTAL
RESTORATION ASSESSMENT OF WEST BAY**

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into by and between the City of Olympia (“City”), a Washington non-charter code city, and the Port of Olympia (“Port”), a Port District formed under RCW Chapter 53.04. The City and Port are referred to herein collectively as the “Parties.”

RECITALS

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide 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, pursuant to RCW 39.34.080, each party is authorized to 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: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Parties desire to work with the Squaxin Island Tribe to assess environmental restoration potential and priorities along the west shore of West Bay in lower Budd Inlet; and

Whereas, the City and the Port each own significant adjoining properties along West Bay that have environmental restoration potential; and

Whereas, the information gathered from this environmental restoration assessment will inform capital facility and project planning by the City, Port and other entities, and support the implementation of a water quality and habitat restoration strategy over time.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

I. Purpose/Objective

The Parties intend to complete a science based environmental restoration assessment of West Bay that will support the implementation of a water quality and habitat restoration

strategy over time. The assessment will identify and prioritize restoration to inform various planning efforts, including but not limited to: capital facilities planning, project mitigation planning, stormwater infrastructure planning and master planning for a West Bay Park and Trail.

II. Scope of Agreement/Work

The Parties agree to jointly engage the services of one or more consultants to assist the Parties in an environmental restoration assessment of the west shore of West Bay in lower Budd Inlet. Tasks will include, but are not limited to: shoreline habitat and restoration assessment, stormwater basin analysis, lagoon area alternatives analysis and implementation strategy.

A consultant will be chosen through the standard selection process for professional services as required by the laws of the State of Washington. The Parties will jointly develop and issue a Request for Qualifications (RFQ) for the consulting work. A project committee will be formed by the Parties to review RFQs of submitting firms and will make a unified recommendation for selection of the firm. The Parties agree to invite the Squaxin Island Tribe to participate in the consultant selection process. Once a consultant is selected, the project committee shall coordinate with the consultant in the development of a Scope of Work and Professional Services Agreement amenable to each Party as a joint contract. The City Manager is authorized to execute the necessary Professional Services Agreement(s), and the Port Executive Director will seek authorization from the Port Commission to execute the contract(s).

The project committee will be responsible for contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction. The consultant shall coordinate regular meetings with the Parties.

III. Consultant and Legal Cost Sharing

The Parties will divide costs for consulting services. The City will pay two-thirds and the Port will pay one-third of the costs for consultant services. Total costs for such services are not to exceed one hundred and fifty thousand and 00/100 dollars (\$150,000).

To the extent feasible, the Parties agree to pursue grants to support the work performed under this agreement. The proceeds of any grants or other donations towards the work performed under this agreement will be deducted from the consulting costs before the cost shares are calculated.

IV. Rights of Ownership – Final Products

All products that result from the work outlined in this agreement will be jointly owned by the Parties.

V. Method of Payment

- a. The consultant will invoice each Party separately on a monthly basis.
- b. Payment will be made separately by each Party to the consultant upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

VI. Indemnification & Insurance

Each Party agrees to defend, indemnify and hold the other Party, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying Party's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying Party's officers, officials and employees.

VII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VIII. Duration of Agreement

This Agreement shall be effective on the date of its entry into force pursuant to Paragraph XIII below and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Parties as provided herein.

IX. Dispute Resolution

- a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute

resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Parties.

XI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Parties and supercedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Parties' websites as provided by RCW 39.34.040.

XIV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Rich Hoey, P.E., Public Works Director
Re: West Bay Environmental Restoration Assessment
PO Box 1967
Olympia, WA 98507-1967

PORT OF OLYMPIA:

Attn: Alex Smith, Environmental Program Director
Re: West Bay Environmental Restoration Assessment
915 Washington Street NE
Olympia WA 98501

This Agreement is hereby entered into between the Parties and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA

PORT OF OLYMPIA

Stephen H. Buxbaum, Mayor

Ed Galligan, Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:



Tom Morrill, City Attorney

_____, Port General Counsel