

POULSBO AGREEMENT DISTRIBUTION SCHEDULE

SUBJECT: **Interlocal Agreement w/Kitsap County for Distribution of Olhava
SEPA Mitigation Funds**

CONFORM AS TO DATES & SIGNATURES

- (X) Approved by Council: 1/9/2008
- (X) Effective: 4/14/2008 (see Section III for duration/termination)
- () Recorded:

DISTRIBUTE CONFORMED COPIES AS FOLLOWS:

- (1) City Attorney
- (K) Clerk's Department: Original
- (1) Finance:
- () Mayor
- () Municipal Court:
- () MRSC
- () Parks/Recreation:
- () Planning/Building:
- () Police:
- () Public Works:
- (2) PW/Engr: One PW/Engr, One Zenger
- (1) Bookshelf Contracts Copy
- () File #
- () Indexing
- (1) Susan - Contract (for scanning) & **webpage**

City Clerk

4-17-2008
Date

**INTERLOCAL AGREEMENT KC 441-07
BETWEEN
KITSAP COUNTY AND THE CITY OF POULSBO
FOR DISTRIBUTION OF OLHAVA ASSOCIATES SEPA MITIGATION FUNDS
OUTLINED IN DEVELOPER'S AGREEMENT (KC 289-04)**

AGREEMENT

THIS AGREEMENT is made and entered into by and between Kitsap County hereinafter called the "County" and the City of Poulsbo, hereinafter called the "City," in accordance with the Interlocal Cooperation Act, Chapter 39.34 RCW.

WITNESSETH

WHEREAS, the County has an executed Development Agreement with Olhava Associates, L.L.P for payment of traffic mitigation funds resulting from the Olhava project (KC 289-04), hereinafter called the "Agreement," which provides for the design and construction of various roadway improvements resulting from development of the Olhava Master Plan, and

WHEREAS, portions of the required roadway improvements identified in the Agreement have been annexed by the City, and

WHEREAS, the County and City intend to work cooperatively to insure that the required roadway improvements are designed and constructed in a thoughtful and efficient manner consistent with the provisions of local laws and RCW Chapters 39.04, 39.06, 39.08, and 39.12 and the Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, and all other applicable laws and regulations, to accomplish the required projects; and

WHEREAS, the parties can achieve cost savings and mutual benefits in the public's interest by combining efforts to complete the required roadway improvement projects.

NOW THEREFORE, it is covenanted and agreed by and between the parties as follows:

I. TERMS AND CONDITIONS

- A. Each party shall appoint a contact person or persons to act as liaison for the Project. These contact persons will meet on an "as needed" basis to serve as a coordination body between the parties.

II. FINANCIAL OBLIGATIONS

- A. The City agrees to contact Olhava Associates, L.P. and formally instruct them to make mitigation payments to Kitsap County per Development Agreement KC 289-04.
- B. The City agrees that the initial developer's payment will include a three hundred fifty thousand dollar (\$350,000) payment to the County plus interest as outlined in the Development Agreement. Any remaining funds collected under the Development Agreement will be provided to the City.
- C. The City will apply for a Transportation Improvement Board (TIB) grant for improving Finn Hill Road from the Rude Road Intersection to Clear Creek Road within five (5) years of the execution of this Interlocal Agreement. If the City is successful obtaining the grant, the City and County will combine their portions of the mitigation payments to use as a local match for the TIB grant.

If the City is unsuccessful obtaining the TIB grant, the County will take its \$350,000 portion of the mitigation funds and proceed with design and construction of intersection improvements at Clear Creek and Finn Hill Roads.

If the City is unsuccessful obtaining the TIB grant, the City will take what funds remain under the Development Agreement and use as they see fit.

- D. Until it is determined if the TIB grant is successful, any funds collected under the Development Agreement will be placed by the County in a separate account earmarked for improvements on Finn Hill Road between Rude and Clear Creek Roads, intersection improvements included.

III. DURATION/TERMINATION

- A. This Agreement will become effective upon the signing of this Agreement by both parties, and will remain in effect until terminated by:
 - 1. Successful completion of TIB funded roadway improvements on Finn Hill Road between Rude Road and Clear Creek Road, or
 - 2. In event that the TIB grant application is unsuccessful, division of respective portions of the traffic mitigation funds between the City and County, or
 - 3. Thirty days advance written notice by either party.

- B. If this Agreement is terminated after receipt of the developer's payment but prior to completion of those improvements identified in Section II, then
1. The County shall remain obligated to expend its \$350,000 portion of the mitigation funds solely on the design and construction of intersection improvements at Clear Creek and Finn Hill Roads; and
 2. The City shall remain obligated to expend the funds that remain from the Development Agreement on road improvements that mitigate the impacts of the Olhava development.

The obligations of the parties to expend the funds as provided in this Subsection III (B) shall survive termination of this Agreement.

IV. INDEMNIFICATION AND HOLD HARMLESS

Each party agrees to indemnify, defend, and hold harmless the other party, and its officers, agents, and employees for all claims (including demands, suits, penalties, losses, damages or costs of any kind whatsoever) including costs, expenses and reasonable attorney's fees, to the extent such a claim arises or is caused by the indemnifying party's own negligence or that of its officers, agents, or employees in performance of this Agreement.

V. OTHER PROVISIONS

- A. No liability shall attach to the County or the City by reason of entering into this Agreement except as expressly provided herein.
- B. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the non-breaching party, which shall be attached to the original Agreement.
- C. Upon completion of the work under this Agreement, each party shall retain ownership and maintenance responsibility for the constructed improvements within their jurisdiction.
- D. This Agreement contains the entire written Agreement of the parties and supersedes all prior discussions. This Agreement may be amended only in writing, and only if signed by both parties.

IN CONSIDERATION of the mutual benefit accruing herein, the parties agree that the work, as set forth herein, will be performed as stipulated in this Agreement.

N WITNESS WHEREOF, the parties to this Agreement have executed this Agreement to take effect as of the date written below.

DATED this 14th day April, 2007. DATED this ___ day _____, 2007.
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KITSAP COUNTY BOARD OF COMMISSIONERS

CITY OF POULSBO

Steve Bauer
Steve Bauer, Chair

Kathryn H. Quade
Kathryn H. Quade, Mayor

Josh Brown
Josh Brown, Commissioner

Jan Angel
Jan Angel, Commissioner



ATTEST:

ATTEST:

Opal Robertson
Opal Robertson, Clerk of the Board

Karol Jones
Karol Jones, City Clerk

APPROVED AS TO FROM:

James E. Haney
James E. Haney, City Attorney