

POULSBO AGREEMENT DISTRIBUTION SCHEDULE

SUBJECT: ILA between City of Poulsbo and Port of Poulsbo for Construction of Anderson Parkway Parking Lot Retrofit

CONFORM AS TO DATES & SIGNATURES

- Approved by the Mayor: _____
- Approved by the City Council: 01-04-2017
- Completion: completion of construction project
- Recorded: _____
- Certificate of Liability: _____

DISTRIBUTE CONFORMED COPIES AS FOLLOWS:

- City Attorney
- Clerk's Department: Original
- Posted to Library Drive
- Posted to Web Site
- Department: _____
- Mayor
- Other: _____

Rhiannon Fernandez
City Clerk

02/16/2017
Date

**INTERLOCAL AGREEMENT BETWEEN CITY OF POULSBO AND THE PORT OF POULSBO FOR
CONSTRUCTION OF ANDERSON PARKWAY PARKING LOT RETROFIT AND SEAWALL REPAIR**

THIS Interlocal Agreement (the "Agreement") is entered into by and between the Port of Poulsbo, a Washington municipal corporation of the State of Washington, (the "Port") and the City of Poulsbo, a Washington city, (the "City").

WHEREAS, both the City and Port own portions of the southern portion of the Anderson Parkway parking lot and the Port owns the existing seawall that forms the western boundary of the parking lot and

WHEREAS, the Port and the City are preparing to commence public works projects where the Port will perform seawall repairs and the City will reconstruct the parking lot; and

WHEREAS, the Port and the City have acquired all necessary permits for the work contemplated herein; and,

WHEREAS, the Port and the City desire to coordinate and construct the project concurrently in order minimize disruption to the community; and

WHEREAS, the City has a grant from the Department of Ecology that requires the City to manage and administer the parking lot construction; and

WHEREAS, pursuant to Chapter 39.34 RCW, the parties desire to enter into this Agreement to provide for coordination and construction of the project.

NOW THEREFORE, the City and Port agree as follows:

1. Joint Project. The parties agree to administer the City's Anderson Parkway Parking Lot Retrofit and the Port's Anderson Parkway Seawall Repair as one project for purposes of bidding and construction (the "Project").

1.1. The City will act as the contract administrator of the Project. In this regard the City shall prepare the bid documents and the contract documents. The bid documents shall contain separate plans for each Parties respective portions of the Project, the City's portion of the Project being identified as "Schedule A" and the Port's portion of the Project as "Schedule B". The Port and the City will each independently draft their respective schedule. The bid documents will be drafted such that a separate price is set forth for each schedule. The Port and the City will each review and approve the bid documents and the contract documents.

2. Contract Award. The City shall bid the Project in accordance with all applicable laws. The Project will be awarded in accordance with City procedures. However, either the City or the Port may elect to reject the bid for its portion of the Project based upon the price. In the event that either party determines that the bid for its schedule of work should be rejected, the parties shall meet and confer regarding such rejection.

3. Contract Bidding.

a. The City shall administer the bidding phase of the Project by preparing a consolidated set of bid documents that incorporate both Schedule A and Schedule B, issuing the

advertisement for bids conducting the bid opening and awarding the contract. The City shall be the contracting agency. Where appropriate (such as insurance and indemnification requirements) the bidding and contract documents will include protection for the City and the Port. The contract documents will allow that the warranty for the work on the Port property may be assigned to the Port.

b. The Port and City will both participate in all contract related meetings including the pre-bid meeting, the bid opening, the pre-construction meeting and weekly construction meetings.

4. Construction Administration. The City will be responsible for the overall administration of the construction contract, including but not limited to administering provisions relating to payment of prevailing wages, requests for information, execution of documents accepting materials, execution of change orders, processing requests for payment, processing of claims, and the administration of the performance and payment bond and the retainage account (the "Administrative Actions"). The City will manage, inspect, and approve all Administrative Actions with regard to Schedule A work and the Port will manage, inspect, and approve all Administrative Actions with regard to Schedule B work. The City and Port will provide daily oversight of their respective work scope, and will cooperate with each other and act on construction issues without delay and to ensure the Project remains on schedule.

5. Payment. The City will be responsible for making all payments due under the construction contract for the Schedule A work directly to the contractor, and for withholding any required retainage and depositing the same in the retainage account in accordance with applicable law. The Port will be responsible for making all payments due under the contract for the Schedule B work directly to the contractor, and for withholding any required retainage in accordance with applicable law. The Port will pay any required retainage amount to the City and the City will deposit the same in the retainage account and manage the same as required under RCW 60.28.

a. Mobilization Costs. Bid documents will show a single mobilization cost for the entire project. The City and Port agree to split mobilization costs based on proportionate share of each respective Schedule relative to total project cost (Base Bid + Schedule A + Schedule B). The City and Port will jointly review and approve Contractor request for payment under the mobilization bid item. Port agrees to reimburse the City for it's share of the mobilization cost within 10 working days after the Contractors request for payment is approved.

6. Responsibility for Claims For and Against Contractor Claims. The City and the Port shall each be responsible for any claims arising from their respective schedules. In the event of a claim (either for or against the contractor) the City and the Port will reasonably cooperate in processing the claim. In the event that the claim arises solely from one of the schedules, the respective party shall be responsible for paying the claim or receiving the payment on the claim. In the event that the claim involves both schedules of work, the City and the Port will be responsible for the fair and reasonable share of the claim flowing from their respective schedule.

7. Indemnification for Negligence. To the extent permitted by law, the City and the Port shall each indemnify and hold harmless the other, their respective elected officials and employees from any and all claims, actions, suits, liability, losses, costs, expenses, including attorney's fees, arising from, any injuries or damages caused by and to the extent of the negligence of the indemnifying party. This section shall survive the expiration or termination of this Agreement.

8. Duration. This Agreement shall become effective upon mutual execution and shall continue until completion of the work and close out of the construction contract. Notwithstanding the foregoing, this Agreement may be terminated at any time prior to execution of the construction contract by either party upon forty-five (45) days written notice from either party to the non-terminating party for any reason or no reason.

9. Ownership and Maintenance of Work. Upon completion of the work, the City shall own and have sole responsibility for the work that is constructed on City owned property, and the Port shall own and have sole responsibility for the work that is constructed on Port owned property. The City agrees to assign any warranty given by the contractor on the work associated with Schedule B to the Port. Each party shall be solely responsible for enforcing the warranty associated with the work owned by them.

10. Survivability. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

11. Agreement Coordinators and Notices. The individuals named below are designated the Agreement Coordinators for this Agreement and the Project. They shall jointly administer this Agreement and the Project. They shall act as the contacts for the respective agencies. Either party may change the Agreement Coordinator by providing written notice to the other. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing, addressed to the Agreement Coordinators and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

The Port:
Executive Director
Port of Poulsbo
PO Box 732
Poulsbo, WA 98370
360-779-9905

The City:
Director of Engineering
200 NE Moe Street
Poulsbo, WA 98370
360-779-9898

Or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

12. Amendment. No modification, termination or amendment of this Agreement may be made except by written agreement signed by authorized representatives of the parties.

13. Waiver. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

15. No Third Party Beneficiary. The other right, privilege, or immunity of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein, except as specifically noted herein.

15. Severability. If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

16. Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

16. Governing Law. This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Kitsap County, Washington.

17. Entire Agreement. The entire agreement between the parties hereto is contained in this Agreement and the Schedules hereto, and this Agreement and the Schedules hereto supersede all of their previous understandings and agreements, written and oral, with respect to this transaction.

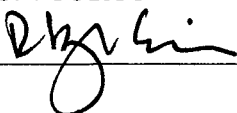
IN WITNESS WHEREOF, the parties have executed this Agreement this 3rd day of January 2017.

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CITY OF POULSBO

By: 

Title: Mayor

PORT OF POULSBO

By: B. Miller

Title: Executive Director

Attest:

By: [Signature]
City Clerk

Approved as to form:

By: [Signature]
City Attorney