

After Recording Return to:

City Attorney
City of Anacortes
Post Office Box 547
Anacortes, WA 98221



200609150174
Skagit County Auditor

9/15/2006 Page 1 of 9 3:47PM

9

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN

P 31670

P 31576

P 101413 + P 101361

Attn GL3+4, Attn SWSW, SE SW 22-35-1

PORT OF ANACORTES

AND

CITY OF ANACORTES

CHICAGO TITLE CO.

C20615

THIS INTERLOCAL COOPERATIVE AGREEMENT (the "Agreement") is made and entered into by and between the **PORT OF ANACORTES** ("the Port") and the **CITY OF ANACORTES** ("the City") pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act.

WHEREAS, the Port is the owner of certain real property in Skagit County, Washington commonly referred to as the Ship Harbor properties (the "Ship Harbor Properties"); and

WHEREAS, a portion of the Ship Harbor Properties have been classified as wetlands (the "Ship Harbor Wetlands"). The Ship Harbor Wetlands are legally described in Exhibit "A" and graphically depicted on Exhibit "B"; and

WHEREAS, the Port has previously declared the Ship Harbor Wetlands as surplus to the needs of the Port; and

WHEREAS, pursuant to Chapter 39.33 and Chapter 39.34 RCW, the Port desires to transfer in fee to the City the Ship Harbor Wetlands; and

WHEREAS, the City desires to take ownership of the Ship Harbor Wetlands; and

WHEREAS, the Port entered into a certain Real Estate Sale Agreement with Clayton's Classics, Ltd. ("Clayton") an Arizona corporation in which it promised to sell certain real property to the Clayton on May 30, 2003, which was amended by that certain First Amendment to Real Estate Agreement dated October 27, 2003, those certain letter agreements dated December 1, 2003, December 22, 2003 and February 10, 2004, that certain Second Amendment to Real Estate Sale Agreement dated December 20, 2004 and that certain Third Amendment to Real Estate Sale Agreement (the "Third Amendment") dated as of February 24, 2006 (collectively the "Real Estate Agreement"). The Real Estate Agreement has been assigned to Gilbane Development Company ("Gilbane"); and

WHEREAS, one of the obligations of the Port under the Real Estate Agreement was to transfer the Ship Harbor Wetlands to the City in part consideration for the release of the Port from any claim for damages arising out of a ruling in the Quiet Title Action in the Superior Court of the State of Washington in and for the County of Skagit, Case No. 04-2-01273-5, *Port of Anacortes v. L.E.D. Co. et al.*

WHEREAS, another obligation of the Port under the Real Estate Agreement was to convey certain easements above and across the Ship Harbor Wetlands to Gilbane and its successors for the benefit of property owned or to be owned by Gilbane for (i) pedestrian and recreational purposes, and (ii) maintenance and construction of such structures, piers, utilities, pathways and roads that the City permits.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions the parties agree as follows:

1. **PORT'S TRANSFER OF THE SHIP HARBOR WETLANDS.** By the Closing Date the Port shall transfer to the City via quit claim deed the Ship Harbor Wetlands, subject to all easements of record at the time of transfer.

1.1. The transfer does not include a forty (40) foot wide strip of land between the Ship Harbor Wetlands and the adjacent aquatic lands.

2. **TERM OF AGREEMENT AND CLOSING DATE.** The term of this Agreement shall extend until all the obligations contained herein are accomplished.

2.1 The closing date of the transfer of the Ship Harbor Wetlands contemplated herein shall be September 15, 2006 or as soon thereafter as agreed by the Port and the City.

3. **CITY'S CONSIDERATION.** In consideration for the Port's transfer of the Ship Harbor Wetlands to the City, the City shall:

3.1. Consider the Ship Harbor Wetlands as open area in any density calculations for the balance of the Ship Harbor Properties with an open space credit to be placed against open space requirements imposed by the City, in its zoning or other capacity, upon the Ship Harbor Properties. Such credit shall be in the form of a one to



one (1:1) ratio in that for every square foot transferred by the Port to the City under this Agreement, the Ship Harbor Properties shall receive an open space credit for one square foot. This density calculation credit shall apply to the Port and any future owner of the Ship Harbor Properties.

3.2. To the extent permitted by law, use its best efforts to approve Gilbane's proposed development plans for the Ship Harbor Properties and issue all necessary and required permits therefore.

4. **TITLE INSURANCE.** Title insurance shall not be purchased for the property transfers contemplated herein.

5. **CLOSING AND ESCROW.** Chicago Title in Anacortes, Washington shall provide escrow services for the property transfers contemplated herein. The Port shall pay all closing and escrow costs arising out of this Agreement.

6. **ADMINISTRATION AND NOTICE.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party. 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 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:

Port of Anacortes: Port of Anacortes
ATTN: Marc Estvold
First and Commercial
Post Office Box 297
Anacortes, WA 98221

City of Anacortes: City of Anacortes
ATTN: Ian Munce
Post Office Box 547
Anacortes, WA 98221-0547

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.

7. **PROPERTY SUBDIVISION.** The City shall be responsible for the cost of any property subdivision necessary to accomplish the transfer of the Ship Harbor Wetlands contemplated herein.



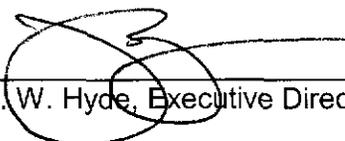
8. **ENVIRONMENTAL RELEASE.** The Port does not make any representation or warranty as to the condition of the Ship Harbor Wetlands. The City shall take possession of the Ship Harbor Wetlands "AS IS". The City and its successors release the Port from any and all liability, claims, losses, demands, actions or causes of action arising from or related to the Ship Harbor Wetlands, including any latent, environmental or hazardous conditions on the Ship Harbor Wetlands, whether known or unknown.

9. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto, upon authorization by the legislative bodies of the City and the Port. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

10. **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, 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 end the terms and conditions of this Agreement are declared severable.

11. **ENTIRE AGREEMENT.** This Agreement contains all terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

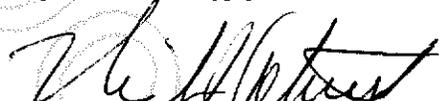
FOR PORT OF ANACORTES



R. W. Hyde, Executive Director

DATED: 9-14-2006

FOR CITY OF ANACORTES



H. Dean Maxwell, Mayor
NICK PETRISH

DATED: 9-15-06

ATTEST:

City Clerk



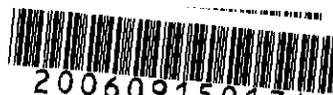
APPROVED AS TO FORM:



Ian Munce, City Attorney and Planning
Director

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INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
PORT OF ANACORTES AND CITY OF ANACORTES - 5



200609150174
Skagit County Auditor

9/15/2006 Page 5 of 9 3:47PM

**EXHIBIT A:
LEGAL DESCRIPTION OF SHIP HARBOR WETLANDS**

Parcel A

The West 40 rods of Government Lot 4 in Section 22, Township 35 North, Range 1 East of the Willamette Meridian; also
The East 40 rods of Government Lot 4, Section 22, Township 35 North, Range 1 East of the Willamette Meridian;
EXCEPTING THEREFROM the West half of said Government Lot 4, as described in that certain lease agreement between the Port of Anacortes and the Washington Toll Bridge Authority recorded under Auditor's File No. 720678, records of Skagit County, Washington, and as said West half is shown on that certain Record of Survey recorded Auditor's File No. 8006190004, records of Skagit County, Washington; and also EXCEPTING THEREFROM the Northeasterly 40.00 feet, as measured at right angles to its Northeasterly line, thereof.

Sources of legal description are Chicago Title Company, Island Division, Commitments for Title Insurance, Orders No. IC37416 and IC37468, bearing Effective Dates of November 21, 2005 and November 29, 2005..

Parcel B

That portion of the Southwest Quarter of the Southwest Quarter Of Section 22, Township 35 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Northeast corner of said Subdivision;
Thence West along the North line of said Subdivision, a distance of 660 feet;
Thence South, a distance of 495 feet;
Thence East, a distance of 660 feet;
Thence North, a distance of 495 feet, to the Point of Beginning;

Source of legal description is Chicago Title Company, Island Division, Commitment for Title Insurance, Order No. IC37469, bearing Effective Date of November 28, 2005.

Parcel C

Wetlands #2 and #3 and #4 in Government Lot 3 of Section 22, Township 35 North, Range 1 East of the Willamette Meridian, more particularly described as follows:

Wetlands #2:

Commencing at the Southwest corner of said Government Lot 3;
Thence North 01° 40' 47" East along the West line of Lot 3, a distance of 106.11 feet to the True Point of Beginning;



Thence continue North 01° 40' 47" East, a distance of 30.09 feet to the intersection with a curve having a radius point bearing North 02° 47' 19" West, a distance of 1,131.28 feet from said intersection point;
Thence in a Northeasterly direction along the arc of said curve through a central angle of 16° 03' 21", a distance of 317.02 feet to a point of compound curve to the left;
Thence along the curve to the left having a radius of 701.78 feet through a central angle of 07° 52' 00", an arc distance of 96.35 feet;
Thence North 63° 17' 20" East, a distance of 191.29 feet;
Thence South 23° 16' 27" West, a distance of 22.31 feet;
Thence South 58° 07' 09" West, a distance of 26.04 feet;
Thence South 67° 20' 28" West, a distance of 44.43 feet;
Thence South 62° 32' 54" West, a distance of 86.80 feet;
Thence South 64° 05' 56" West, a distance of 56.35 feet;
Thence South 73° 42' 12" West, a distance of 32.86 feet;
Thence South 70° 07' 23" West, a distance of 30.36 feet;
Thence South 51° 29' 37" West, a distance of 51.22 feet to the intersection with a curve having a radius point bearing North 16° 15' 51" West, a distance of 1,161.28 feet;
Thence along the arc of said curve in a Southwesterly direction through a central angle of 13° 35' 28" an arc distance of 275.47 feet to the True Point of Beginning.

Wetlands #3:

Commencing at the Southwest corner of said Government Lot 3;
Thence North 01° 40' 47" East along the West line of said Government Lot 3, a distance of 136.20 feet to the True Point of Beginning;
Thence continue North 01° 40' 47" East, a distance of 108.96 feet;
Thence North 45° 21' 03" East, a distance of 49.65 feet;
Thence North 70° 44' 57" West, a distance of 25.11 feet;
Thence North 45° 00' 00" West, a distance of 10.00 feet;
Thence North 07° 25' 22" East, a distance of 27.61 feet;
Thence South 78° 25' 20" East, a distance of 16.84 feet;
Thence North 78° 36' 58" East, a distance of 73.46 feet;
Thence South 72° 10' 57" East, a distance of 74.68 feet;
Thence North 77° 59' 35" East, a distance of 39.75 feet;
Thence South 78° 03' 19" East, a distance of 42.17 feet;
Thence South 89° 26' 18" East, a distance of 42.31 feet;
Thence South 53° 15' 14" East, a distance of 43.23 feet;
Thence North 34° 37' 42" East, a distance of 36.59 feet;
Thence North 20° 03' 39" East, a distance of 29.85 feet;
Thence North 35° 18' 21" East, a distance of 43.08 feet;
Thence South 49° 11' 56" East, a distance of 28.38 feet;
Thence South 69° 44' 11" East, a distance of 31.45 feet;
Thence North 62° 59' 04" East, a distance of 49.57 feet;
Thence South 88° 50' 51" East, a distance of 41.49 feet;
Thence South 79° 01' 13" East, a distance of 21.22 feet;
Thence North 72° 53' 55" East, a distance of 23.68 feet;
Thence South 48° 02' 39" East, a distance of 28.33 feet;

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
PORT OF ANACORTES AND CITY OF ANACORTES - 7



200609150174
Skagit County Auditor

Thence South 23° 16' 27" West, a distance of 38.14 feet;
Thence South 63° 17' 20" West, a distance of 191.29 feet to the beginning of a curve to the right having a radius of 701.78 feet;
Thence along the arc of said curve through a central angle of 07° 52' 00" a distance of 96.35 feet to the beginning of a curve to the right having a radius of 1,131.28 feet, said point being a point of compound curve;
Thence continue along the arc of said curve through a central angle of 16° 03' 21" an arc distance of 317.02 feet to the True Point of Beginning.

Wetlands #4

Commencing at the Southwest corner of said Government Lot 3;
Thence South 88° 11' 46" East, along the South line of said Government Lot 3, a distance of 63.80 feet;
Thence North 69° 01' 00" East, a distance of 49.00 feet;
Thence North 50° 00' 00" East, a distance of 150.50 feet;
Thence North 55° 40' 00" East, a distance of 51.20 feet;
Thence North 35° 00' 00" East, a distance of 12.36 feet to the intersection of a curve having a radius point bearing North 16° 15' 51" West, a distance of 1,161.28 feet;
Thence in a Southwesterly direction along the arc of said curve through a central angle of 13° 35' 28", an arc length of 275.47 feet to the West line of said Government Lot 3;
Thence South 01° 40' 47" West, a distance of 106.11 feet to the point of beginning.

Source of legal description is Chicago Title Company, Island Division, Commitment for Title Insurance, Order No. IC37500, bearing Effective Date of November 18, 2005.

Parcel D

A portion of the Southeast Quarter of the Southwest Quarter of Section 22, Township 35 North, Range 1 East of the Willamette Meridian, described as follows:

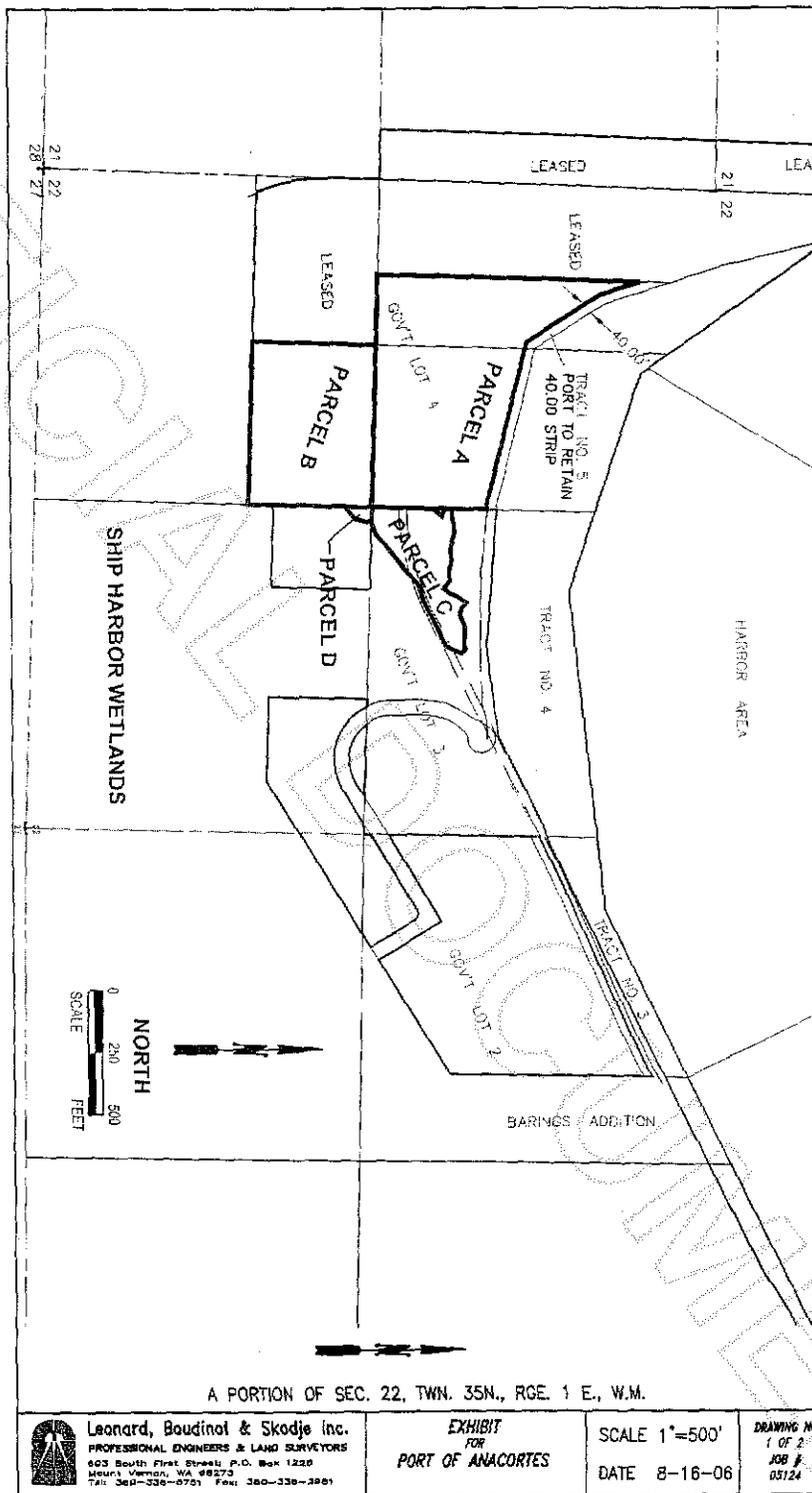
Beginning at the Northwest corner of said subdivision;
Thence South 88° 11' 46" East along North line, a distance of 63.80 feet;
Thence South 14° 46' 35" West, a distance of 69.03 Feet;
Thence South 48° 21' 50" West, a distance of 66.20 feet to the West line of said Southeast Quarter of the Southwest Quarter;
Thence North 1° 40' 47" East along said West line, a distance of 112.79 feet to the true point of beginning.

Source of legal description is Chicago Title Company, Island Division, Commitment for Title Insurance, Order No. IC37499, bearing Effective Date of December 1, 2005.

All situated in Skagit County, Washington



**EXHIBIT B:
MAP OF SHIP HARBOR WETLANDS**



INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
PORT OF ANACORTES AND CITY OF ANACORTES - 9



200609150174
Skagit County Auditor