

**INTERLOCAL AGREEMENT
REGARDING PARTICIPATION IN LOCAL INFRASTRUCTURE
FINANCING WITHIN REVENUE DEVELOPMENT AREA**

THIS INTERLOCAL AGREEMENT (the “LIFT Participation Agreement” or “Agreement”) is made and entered into by and between the Port of Bellingham (the “Port”) and the City of Bellingham (the “City”) under Chapter 39.34 RCW in order to comply with certain provisions of Chapter 181, Laws of 2006, in connection with the redevelopment of the Bellingham waterfront.

RECITALS

WHEREAS, the Port and the City jointly desire to redevelop the portions of the Bellingham waterfront that have historically been the sites of (1) certain Georgia-Pacific Corporation industrial facilities, (2) various light industrial, wharf, terminal and landfill facilities on the central Waterfront, and (3) the Cornwall Avenue Landfill; and

WHEREAS, the Port and the City entered into an “Interlocal Agreement Regarding the ‘New Whatcom Special Development Area’” dated January 4, 2005 (the “New Whatcom Interlocal”), under which the Port and the City agreed, among other things, to jointly develop a New Whatcom Development Plan (the “NWDP”) for the cooperative development of the Bellingham Waterfront; and

WHEREAS, in the New Whatcom Interlocal, the City agreed to design, construct, and maintain certain landside public infrastructure (the “City Landside Infrastructure”) including:

- a. streets, curbs, gutters, sidewalks, lighting and traffic controls,
- b. water and sewer,
- c. storm water treatment and conveyance facilities,
- d. certain area wide parking,
- e. public parks, open space, and public access,

which are further described by way of example and not limitation in **Attachment A** (incorporated herein by reference);and

WHEREAS, in the New Whatcom Interlocal, the Port agreed to design, construct, and maintain certain marine public infrastructure (the “Port Marine Infrastructure”)

WHEREAS, the Washington State Legislature has enacted Chapter 181, Laws of 2006 (the “Act”), a statute providing for the “Local Infrastructure Financing Tool” (“LIFT”), which will enable the City, as a “sponsoring local government”, to establish a revenue development area (“RDA”) within which certain public improvements such as the City Landside Infrastructure may be constructed in order to promote community and economic development; and

WHEREAS, Section 102(5)(a) and Section 203 of the Act designate the Bellingham waterfront redevelopment project as a demonstration project; and

WHEREAS, the Act provides the City, County and the Port with the opportunity to collaboratively demonstrate in Washington State the benefits of the LIFT, a limited form of tax

increment financing, which has been used successfully in states throughout the nation to promote positive economic development; and

WHEREAS, by collaboratively demonstrating the benefits of LIFT, the City, County and Port will help pave the way for jurisdictions throughout Washington State to also benefit from LIFT; and

WHEREAS, redeveloping Bellingham’s central waterfront will provide numerous benefits for all of Whatcom County. These benefits include: (1) promoting mixed-use redevelopment that will help generate new family-wage jobs; (2) providing an area for both housing and business development to occur in a manner that helps preserve the County’s limited supply of agricultural and natural resource lands; and (3) helping reduce traffic congestion by allowing more people to live near where they work—instead of having to commute long distances; (4) facilitating remediation of environmental contamination within the site to a standard suitable for mixed-use redevelopment; and (5) facilitating the creation of valuable near shore habitat and

WHEREAS, a revenue development area would provide significant assistance in carrying out the cooperative redevelopment of Bellingham’s waterfront; and

WHEREAS, the Act requires the City to create a revenue development area, subject to provisions of the Act, to qualify for a state contribution up to a total amount of one million dollars per year; and

WHEREAS, if the City complies with certain requirements of the Act, the City will be permitted to impose a special sales and use tax, the amount of which will be credited against State sales and use taxes imposed under chapters 82.08 and 82.12 RCW, and to use the proceeds of that special City tax to retire bonds issued to finance public improvements such as the City Landside Infrastructure; and

WHEREAS, the foregoing sales and use tax will not increase taxes but, rather, will function as a credit against the state taxes imposed under RCW Chapters 82.08 or 82.12; and

WHEREAS, under the Act, the City’s ability to impose the special sales and use tax, and the amount of that tax, is dependent on a number of factors, including the willingness of one or more “participating taxing districts” to enter into a written agreement with the City under which the participating taxing district agrees to dedicate and allocate “local property tax allocation revenue” (as defined in the Act) to finance specified public improvement projects, and under which the City, as a sponsoring local government, agrees to dedicate those local property tax allocation revenues for local infrastructure financing authorized under the Act; and

WHEREAS, the Port desires to be a participating taxing district within a City-sponsored RDA (the “New Whatcom RDA”) comprised of the area described in **Attachment B** (incorporated herein by reference) and to dedicate and allocate the Port’s local property tax allocation revenue within the New Whatcom RDA to help finance the City Landside Infrastructure;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this LIFT Participation Agreement, the Port and the City agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are incorporated as part of the agreement between the parties as if set forth in this paragraph.
2. **Port as Participating Taxing District.** In order to assist in the financing of the City Landside Infrastructure, the Port agrees to be a “participating taxing district” as that term is defined in Section 102(17) of the Act, and to dedicate and allocate all of its local property tax allocation revenue (as specified in Section 302(b) of the Act) from within the New Whatcom RDA to assist in the local infrastructure financing (as defined in the Act) for the City Landside Infrastructure. By authorizing this LIFT Participation Agreement by motion of its Board of Commissioners, the Port agrees to “opt into the local infrastructure financing public improvement project” as that phrase is used in Section 205 of the Act. The Port acknowledges that the City will pledge the Port’s local property tax allocation revenue from within the New Whatcom RDA to the payment of the principal and interest on bonds or other obligations authorized under Section 501 of the Act, and the Port agrees that it will not take any action to reduce, eliminate or impair the dedication and allocation of its local property tax allocation revenue so long as any such bonds or other obligations are outstanding. The parties acknowledge that the foregoing covenant does not constrain the Port’s legislative body from setting its local property tax rate but, rather, applies to the dedication and allocation of the revenue generated from the Port’s local property tax.
3. **City Dedication of Revenues for City Landside Infrastructure Within the RDA.** The City shall proceed with the creation of the New Whatcom RDA, subject to and consistent with the requirements of the Act. The City agrees to use all of the Port’s local property tax allocation revenue from within the New Whatcom RDA for local infrastructure financing authorized under the Act. Such local infrastructure financing proceeds shall to be used only to help pay for the City Landside Infrastructure that is specified in the New Whatcom Development Agreement.
4. **Failure to Complete New Whatcom Development Agreement.** It is anticipated that the Port and the City will agree on a New Whatcom Development Agreement after the pledge of local property tax allocation revenue from within the New Whatcom RDA for local infrastructure financing authorized under the Act, In the unlikely event that the Port and the City fail to agree on a New Whatcom Development Agreement, the City will use an amount equivalent to that portion of the LIFT revenue that is attributable to the Port’s participation to finance the construction of selected improvements planned for the New Whatcom Revenue Development Area. The improvements will be selected jointly by the City and the Port based upon a priority order that is mutually agreed on by the City and the Port and that is consistent with the Act.
5. **Term of Agreement.** The term of this Agreement shall commence upon execution by the City and the Port (whichever executes last) and shall continue until the purposes set forth herein are achieved. However, this Agreement shall not terminate so long as bonds or other obligations are outstanding, to which the Port’s local tax allocation revenue has been pledged.
6. **Administration of Agreement.** This LIFT Participation Agreement shall be jointly administered by the City acting through the Mayor or the Mayor’s designee and the Port acting through the Executive director or the Executive Director’s designee. The City will act as the lead party with respect to contracts with the Washington State Department of Community, Trade and Economic Development in connection with applying for and receiving State contributions under the Act, and with the Washington State Department of Revenue with respect to the collection,

dedication and allocation of local public sources (as defined by the Act) including the Port's local property tax allocation revenue. In this regard and with the prior written approval of the other party, either the city or the Port may act as the lead party for any other contracts entered into in furtherance of this Agreement.

7. **Amendment.** No modification or amendment of this Agreement may be made except by a written document approved by the Port and City by action of their respective governing bodies. The execution by the City of a similar agreement with any other participating local government or participating taxing district with respect to the New Whatcom RDA shall not constitute an "amendment" of this LIFT Agreement.

8. **Severability.** In the case of a determination of invalidity, illegality or unenforceability of one or more provisions of this Agreement (other than Sections 2 or 3), such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. In the case of a determination of invalidity, illegality or unenforceability of either Section 2 or 3, City and Port representatives shall use their best reasonable efforts to resolve the issue in order to accomplish the purpose of this Agreement.

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

10. **Counterparts.** This Agreement may be executed in one or more counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

11. **Governing Law and Venue.** This Agreement, and the rights of the parties, shall be governed by and construed in accordance with the laws of the State of Washington. Any action for the interpretation or enforcement of this Agreement shall lie in the Superior Court for the State of Washington in either Whatcom County or Thurston County, Washington.

12. **Neutral Authorship.** Each provision of this LIFT Participation Agreement has been reviewed and negotiated, and represents the combined work product of the Port and the City. No presumption or other rules of construction that would interpret the provisions of this Agreement in favor of or against the Port or the City shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

ADOPTED AND APPROVED by each government executing this LIFT Participation Agreement below.

THE PORT OF BELLINGHAM

_____ Dated: _____
By: Commission President
Authorized by Port motion approved, _____, 2006

THE CITY OF BELLINGHAM

_____ Dated: _____
By: Mayor
Authorized by City Resolution No. _____, passed _____, 2006

Attest:

Finance Director

City Departmental Approval:

Department Head

Approved as to Form:

Office of the City Attorney