

**THIRD AMENDMENT
TO
CITY OF TUMWATER/PORT OF OLYMPIA
INTERLOCAL AGREEMENT
FOR
HABITAT CONSERVATION PLAN
PREPARATION**

This Third Amendment ("Third Amendment") is dated effective this ___ day of February, 2024, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and the PORT OF OLYMPIA ("PORT"), a Washington public port district.

A. The CITY and the PORT entered into an Interlocal Agreement dated effective November 1, 2016, whereby the parties agreed to prepare a Habitat Conservation Plan jointly ("Agreement").

B. The CITY and the PORT entered into the First Amendment to City of Tumwater/Port of Olympia Interlocal Agreement for Habitat Conservation Plan Preparation dated May 11, 2020, that extended the Agreement until December 31, 2021 ("First Amendment").

C. The CITY and the PORT entered into the Second Amendment to City of Tumwater/Port of Olympia Interlocal Agreement for Habitat Conservation Plan Preparation dated November 1, 2021, that extended the Agreement until December 31, 2023 ("Second Amendment").

D. Section 8 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.

E. The CITY and the PORT desire to amend the Agreement to continue the activities described in Section 1 of the Agreement, add additional activities, and extend the duration of the Agreement.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. Agreement.

Section 1 of the Agreement shall be amended to add additional responsibilities of the parties, as follows:

A. The City will maintain and fulfill the grant financial commitment for the HCP Phase 1 completion of \$58,000.00 in cash matching funds and \$30,000.00 of in-kind matching funds;

- B. The Port will be responsible for additional funding not to exceed \$58,000, resulting from Port participation in the HCP Phase 1 that result from an expanded scope and additional process associated with inclusion of Port properties;
- C. The City of Tumwater will seek reimbursement from the Washington Department of Fish and Wildlife (“WDFW”) for activities covered under this ILA. The City of Tumwater will then bill the Port of Olympia for the Port’s portion;
- D. The City is responsible for the HCP Phase 1 grant reporting and deliverables directly to WDFW and will therefore maintain primary responsibility for project completion for the HCP Phase 1;
- E. The Parties agree to apply for HCP Phase 2 grant funds jointly, with the Port working with U.S. Fish & Wildlife as lead to prepare the application. The Port and the City will jointly ensure all reporting requirements are met and deliverables submitted on time for HCP Phase 2;
- F. The Parties agree to split grant funding match obligations for HCP Phase 2 grant funds evenly in an amount not to exceed \$150,000 per party;
- G. The Parties agree to apply for grant funds for additional HCP phases jointly, as required by necessity or practicality. The City will be responsible for grant applications, reporting, and deliverables with assistance provided by the Port as required. Prior to acceptance of future phase grants, the Parties agree that grant funding match obligations will be split evenly and with an identified not-to-exceed dollar amount per Party;
- H. The HCP Phase 3 grant obligates the Parties to funding match obligations not to exceed \$39,500 per party. Additionally, the HCP Phase 4 grant is anticipated to obligate the Parties to funding match obligations not to exceed \$90,000 per party. Future phase grants meeting the criteria listed in Paragraph G need not be incorporated into a subsequent formal amendments of this Agreement.
- I. The Parties agree to cooperate in jointly developing and implementing mitigation measures identified as part of the HCP process, with specific allocation of mitigation costs and obligations to be determined by later agreement of the Parties prior to approval of the final HCP; and

JH. It is expected upon approval of the HCP that incidental take permits under the ESA will be issued to both Parties.

2. Duration.

Section 2 of the Agreement shall be amended to extend the term of the Agreement, as follows:

The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting of this Agreement on each Party's website as provided in RCW 39.34.040. This Agreement shall terminate ninety (90) days after issuance of an Incidental Take Permit by the U.S. Fish and Wildlife Service, indicative of U.S. Fish and Wildlife Service approval of the HCP, and subsequent City approval of revisions to applicable municipal codes regarding development related to an Incidental Take Permit~~upon USFWS approval of the joint HCP and the granting of associated incidental take permits to each Party~~ or December 31, 20283, whichever occurs sooner.

3. FULL FORCE AND EFFECT.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

DATED the effective date set forth above.

CITY:

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501
Debbie Sullivan, Mayor

PORT:

PORT OF OLYMPIA
606 Columbia Street NW
Olympia, WA 98501
Rudy Rudolph,
Interim Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM:

Karen Kirkpatrick
Tumwater City Attorney

Rick Hughes
Port General Legal Counsel