

**AGREEMENT BETWEEN THE PORT OF EVERETT AND THE CITY OF  
EVERETT FOR THE WEST MARINE VIEW DRIVE ROADWAY PEDESTRIAN /  
BICYCLE CORRIDOR IMPROVEMENTS**

**THIS AGREEMENT** is made and entered into by and between the City of Everett, a first class charter city under the laws of the state of Washington (the "CITY"), and the Port of Everett, a port district under the laws of the State of Washington (the "PORT").

**RECITALS**

**WHEREAS**, the PORT is the recipient of American Recovery and Reinvestment Act of 2009 (ARRA) funds for the construction of the West Marine View Drive Roadway Pedestrian / Bicycle Corridor Improvements, hereinafter referred to as the "PROJECT"; and,

**WHEREAS**, the CITY and PORT mutually support the design and construction of the West Marine View Drive Roadway Pedestrian / Bicycle Corridor Improvements, and,

**WHEREAS**, it has been the long-term policy of the City, and will continue to be so, to improve safety and accessibility for non-motorized corridor improvements; and,

**WHEREAS**, because the City has the status as a Certification Acceptance (CA) agency, the PORT desires to transfer the construction phase of this Project to the City; and,

**WHEREAS**, the CITY and PORT desire to define responsibilities for items related to construction of the PROJECT;

**AGREEMENT**

**NOW, THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**1. CITY RESPONSIBILITIES**

1.1 The CITY will act as lead agency in contracting with the Washington State Department of Transportation (WSDOT) for the reimbursement of eligible PROJECT expenditures related to construction. The parties agree that WSDOT shall disburse ARRA funds for the PROJECT to the CITY.

1.2 No more frequently than once per month, the CITY shall prepare invoices for submittal to grantor agencies showing expenditures of the PROJECT and requesting reimbursement of the respective percentages of expenditures eligible for reimbursement.

Concurrently, the CITY will send an invoice to the PORT, with a copy of the invoice to WSDOT, requesting reimbursement from the PORT of the remainder of all expenditures.

1.3 The CITY will act as lead agency and assist the PORT in obtaining funding through the Federal Highway Administration (FHWA) or other agencies as applicable for any remaining PROJECT funding needed. The CITY shall not be liable or responsible to the PORT in the event the FHWA or any other agencies fail to grant funds in whole or in part.

1.4 The CITY will initiate the public bid process as soon as practicable after the construction documents are prepared. The public bid documents and the contract documents will provide that the PORT is to be indemnified and held harmless by the contractor and that the contractor's and subcontractors' insurance shall name the PORT as an additional named insured, by endorsement. The PORT shall have the opportunity to review and comment to the CITY on the form of the contract prior to the public bid process. Upon receipt of the bids for construction of the PROJECT from qualified contractors, the CITY shall consult with the PORT to determine whether there are sufficient funds to construct the PROJECT based on the bids received. In the event that the PORT determines that there are not sufficient funds to go forward with the PROJECT, the CITY shall reject all bids. The CITY shall also provide the PORT with a copy of the bid tabulation and shall accept any PORT comments regarding the bids and bidders. After the PORT's determination that sufficient PROJECT funding is available, the formal determination as to which contractor shall receive the bid award shall be solely that of the CITY.

1.5 The CITY shall administer the PROJECT construction contract. The CITY will consult with a person designated by the PORT prior to directing the contractor to perform extra work, if advance consultation is practicable, will not delay the contractor, and is not required by an emergency. Where advance consultation is not practicable, will delay the contractor, or is required by an emergency, the CITY need not consult with the PORT prior to directing the contractor to perform extra work. Prior to executing all change orders, the CITY will consult with the person designated by the PORT. In order for it to be fully informed, the PORT may have a representative attend the periodic job site meetings between the CITY and the contractor. Failure to consult with the PORT as provided herein shall not affect the PORT's obligations to reimburse the CITY under this Agreement, absent prejudice or damage to the PORT. The PORT shall designate a point of contact with whom the CITY should consult regarding performance of the work by the contractor, including, but not limited to, extra work, differing site conditions, change orders and claims. In the case of emergency situations, the procedures in the WSDOT LAG Manual will apply.

1.6 Upon completion of construction and acceptance by the CITY, the CITY shall own the PROJECT and the PORT's responsibility for the PROJECT under this Agreement shall terminate, except the responsibilities contained in section 2.2 and any other section that reasonably requires action subsequent to acceptance of the construction,

e.g., payments or reimbursements from grant sources. Except as the PORT and CITY may agree in the future, the PORT shall have no responsibility for future modifications to the West Marine View Drive roadway pedestrian / bicycle corridor improvements or transportation system changes relating thereto. However, future Port development requiring modifications to the Project area or transportation system relating thereto may be required of the Port as a result of such development.

## 2. PORT RESPONSIBILITIES

2.1 The PORT will work with the CITY to develop a WSDOT approved set of construction documents, right-of-way certification, and all required permits prior to 1 July, 2009.

2.2 The PORT will be responsible for all eligible PROJECT expenditures not reimbursed by PROJECT funding sources; provided, however, the CITY shall not charge the PORT for any engineering design services provided by CITY employees and costs of preparing grant applications that are not eligible for reimbursement by the granting agency. In the event that PROJECT expenditures exceed funding committed from the various funding sources, the PORT and the CITY agree to discuss alternative funding sources to complete the PROJECT. Absent a written agreement subsequent to this Agreement between the PORT and the CITY as to alternative additional funding sources to fund the PROJECT fully, the PORT shall be responsible for any and all PROJECT expenditures and costs arising out of the PROJECT for which the CITY did not expressly agree in writing to pay or be liable, including but not limited to, cost overruns and increases in PROJECT cost, irrespective of whether such overruns or increase were expected and irrespective of the source or reason for such overruns or increases unless such overruns or increase were caused by the CITY's gross negligence.

2.3 The PORT will make payments to the CITY within thirty (30) days of receipt of the invoices described above.

2.4 Upon completion of construction, the PORT shall cooperate with the CITY to document, to the extent necessary, the CITY's ownership of the PROJECT.

2.5 Upon completion of the PROJECT, the PORT shall assume permanent maintenance responsibility for all landscaping and irrigation within the public right of way along PORT property that fronts the PROJECT.

## 3. CONTRACT INTERPRETATION/MODIFICATION

3.1 This Agreement may be modified or amended only in writing, signed by both parties.

3.2 The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the CITY or the PORT during the term of this Agreement and for three (3) years after its termination.

3.3. Nothing contained herein is intended to, nor shall be construed to create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the CITY or the PORT, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.

3.4. All notices pursuant to this Agreement shall be given in writing and delivered by U.S. Mail or delivered in person to the following:

**City of Everett**  
Attn: Ryan L. Sass, P.E.  
City Engineer  
3200 Cedar Street  
Everett WA 98201

**Port of Everett**  
Attn: John Klekotka, P.E.  
Chief of Engineering and Planning  
P.O. Box 538  
Everett WA 98206

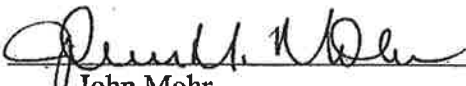
**WHEREFORE**, the Port of Everett and the City of Everett have executed this Agreement on the dates set forth below.

DATED this 22<sup>nd</sup> day of June, 2009

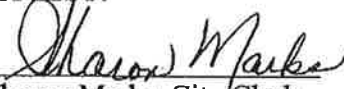
**CITY OF EVERETT**

  
\_\_\_\_\_  
Ray Stephanson  
Mayor

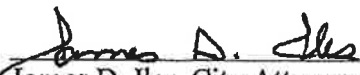
**PORT OF EVERETT**

  
\_\_\_\_\_  
John Mohr  
Director

ATTEST:

  
\_\_\_\_\_  
Sharon Marks, City Clerk  
Date: 6/22/09

APPROVED AS TO FORM:

  
\_\_\_\_\_  
James D. Iles, City Attorney  
Date: 6/19/09