

**FIRST SUPPLEMENTAL AGREEMENT
TO THE
INTERLOCAL AGREEMENT REGARDING THE
“NEW WHATCOM SPECIAL DEVELOPMENT AREA”**

This First Supplemental Interlocal Agreement (the “First Supplemental Agreement”) to the Interlocal Agreement regarding the “New Whatcom Special Development Area” is made and entered into by and between the Port of Bellingham (the “Port”) and the City of Bellingham (the “City”) pursuant to Chapter 39.34 RCW with regard to the New Whatcom Special Development Area.

WHEREAS, on January 4, 2005, the Port and the City entered into an Interlocal Agreement for the New Whatcom Special Development Area (the “New Whatcom Interlocal Agreement”); and

WHEREAS, on January 4, 2005, the Port and the City also entered into an Interlocal Agreement for the Implementation of the Waterfront Futures Group Recommendations; and

WHEREAS, on December 14, 2005 the Port and the City entered into an Interlocal Agreement regarding the Acquisition of the Chevron Property and the Colony Wharf Property and the Remediation of the Cornwall Avenue Landfill Site and the Central Waterfront Site; and

WHEREAS, the Port and City have engaged in the process of developing the New Whatcom Development Plan, which is anticipated to be embodied in a Development Agreement; and

WHEREAS, the New Whatcom Development Agreement will define the specific mix of uses, design and development standards to implement the community vision for the New Whatcom Special Development Area (SDA) and the Port’s Scheme of Harbor Improvements will address the marine infrastructure and development of Port properties within the SDA; and

WHEREAS, the Port and City have agreed to jointly develop and fund the New Whatcom Development Plan; and

WHEREAS, the Port and the City will be developing the Environmental Impact Statement (“EIS”) under the State Environmental Policy Act (“SEPA”) for the New Whatcom Special Development Area Master Plan to analyze the potential impacts and corresponding mitigating measures to address the conversion of a two hundred six (206) acre industrial Brownfield site to a new mixed-use waterfront neighborhood. The site includes the former Georgia Pacific pulp and paper mill site, treatment lagoon and surrounding public and private properties within the New Whatcom Special Development Area, established in the New Whatcom Interlocal Agreement; and

WHEREAS, the environmental review for the New Whatcom Special Development Area Master Plan and Scheme of Harbor Improvements, including the development of draft and final EIS documents and the continuing work on the New Whatcom Development Plan require additional consulting services; and

WHEREAS, the New Whatcom Interlocal Agreement anticipates joint funding, as specified therein and as further negotiated and agreed upon in supplemental agreements, of the cost associated with the development of the New Whatcom Development Plan; and

WHEREAS, the Port and City have jointly, through a competitive selection process, selected the firm of LMN Architects and their sub-consultant Michael Blumen Consulting Group, Inc., to provide additional consulting services for the preparation of the EIS and the continuing development of the New Whatcom Development Plan; and

WHEREAS, the Port and the City desire to supplement the terms of the New Whatcom Interlocal Agreement with this First Supplemental Agreement to address the funding of the additional consulting work of LMN Architects, Michael Blumen Consulting Group, Inc., and other selected firms and other funding issues related to plan development.

NOW, THEREFORE, in consideration of mutual covenants and conditions contained herein, the Port and the City agree as follows:

1. **Purpose and Joint Funding of Preliminary SEPA Work.** The parties agree to provide additional funding for the year 2006 to undertake the preliminary SEPA work identified in Article III, paragraph 9(a) of the New Whatcom Interlocal Agreement. The Port and the City agree that the purpose of the redevelopment project in the New Whatcom Special Development Area will include environmental remediation to a standard suitable for mixed residential, commercial, light industrial, institutional and recreational use and the development of transportation and utilities, public access, parks and open space and marine infrastructure, including a three hundred to four hundred fifty (300-450) slip marina, a boat launch, transient moorage and associated parking. The environmental remediation for identified sites within the New Whatcom Development Area will be analyzed in Remedial Investigation Feasibility Studies prepared by the Port for the Washington State Department of Ecology. Additional environmental review under SEPA will also be performed by the Washington State Department of Ecology, associated with the remediation of identified sites within the study area. The year 2006 funding requirement is:

Work	Cost	Port Share	City Share
Preliminary SEPA work	\$56,330	\$28,165	\$28,165

2. **SEPA Responsible Official.** The Port's Director of Environmental Programs shall serve as the Responsible SEPA Official for the New Whatcom Special Development Area SEPA Process. In undertaking these duties he shall coordinate with the City's Public Works Director.

3. **Joint Funding for Continuing Work on the Development of the New Whatcom Development Plan.** The parties agree to provide the following additional funding in calendar year 2006 to undertake continuing planning activities as identified in Article III, paragraph 9(a) of the New Whatcom Interlocal Agreement. These additional funds will be used to fund continuing planning and public information and involvement work by the selected consultants to develop the New Whatcom Development Plan:

Work	Cost	Port Share	City Share
Additional Planning Activities – New Whatcom Development Plan	\$50,000	\$25,000	\$25,000

4. **Anticipated Future Work.** The Port and the City recognize that there will likely be a need for additional funding to complete SEPA process and to finish the New Whatcom Development Plan and that any future funding commitment will require the execution of an additional Supplemental Interlocal Agreement and the approval of the Port Commission and City Council.

5. **Contract Administration.** The Port will be the Lead Agency in contracting for and managing the consultant agreements for work identified in Paragraphs #1 and #4 to this Supplemental Interlocal Agreement. The Port's Director of Environmental Programs shall be the Port's representative with regard to these contracts. The City's Public Works Director will be the City's representative with regard to these contracts. Upon receipt of an invoice from the consultants, the Port will provide a copy to the City and the City will promptly pay to the Port fifty percent (50%) of the invoice. If there are any issues concerning the invoice the Port and City representatives will meet and resolve the issues.

6. **New Whatcom Interlocal Agreement – Timeline for Adoption of New Whatcom Development Plan.** The Port and the City have been working diligently and cooperatively to develop the New Whatcom Development Plan. It is anticipated that the draft New Whatcom Development Area Master Plan and associated draft EIS will be presented for public review and comment in late 2006. The final New Whatcom Development Plan and associated SEPA documents will be presented to the Port Commission and the City Council for consideration in early 2007. However, the Port and the City recognize that this date may be extended to ensure that comprehensive SEPA and New Whatcom Development Plan documents are provided for consideration.

7. **Terms and Conditions of Existing Interlocal Remain the Same:** The parties agree that, except as specifically supplemented hereinabove, the terms and conditions of the New Whatcom SDA Interlocal Agreement shall continue in full force and effect.

ADOPTED by each government noted below in an open public meeting on the date noted.

THE PORT OF BELLINGHAM

Commission President

Date _____

CITY OF BELLINGHAM

Date _____

Departmental Approval:

Mayor

Department Head

Attest:

Approved as to form:

Finance Director

Office of the City Attorney

**INTERLOCAL AGREEMENT
REGARDING THE
"NEW WHATCOM SPECIAL DEVELOPMENT AREA"**

THIS INTERLOCAL AGREEMENT (the "Agreement") is made and entered into by and between the Port of Bellingham ("Port") and the City of Bellingham ("City") pursuant to Chapter 39.34 RCW to address in a comprehensive manner issues necessary for the successful redevelopment of the Bellingham waterfront.

**ARTICLE I
RECITALS**

WHEREAS, the Port and the City have, by a previous interlocal agreement, jointly established and funded the Waterfront Futures Group ("WFG"). This citizen advisory panel was tasked to develop and make recommendations on issues regarding future development of Bellingham's waterfront and to report its recommendations to both the Port and the City; and,

WHEREAS, following an extensive public process, the WFG completed its recommendations for Bellingham's waterfront which was delivered in draft form to the Port and City on June 24, 2004; and

WHEREAS, the Port and the City have entered into a comprehensive interlocal agreement entitled "Interlocal Agreement for the Implementation of the Waterfront Futures Group Recommendations" for cooperation in the future development of Bellingham's waterfront. That interlocal agreement contemplated that the Port and the City would enter into separate interlocal agreements to specifically address the redevelopment of certain areas of the Bellingham waterfront; and,

WHEREAS, for the past ninety years, the Port has operated a deep water break bulk shipping terminal on the downtown waterfront to support industrial activity in Bellingham and Whatcom County. The use of the shipping terminal is now limited due to the decline of industrial activity that requires break bulk shipping; and

WHEREAS, Georgia-Pacific Corporation (Georgia-Pacific) has operated an industrial facility on the downtown waterfront consisting of a pulp mill, a tissue mill, a waste water treatment facility and a large warehouse. Georgia-Pacific closed its pulp mill operation in 2001 and has indicated that it will be closing its tissue mill operation in the foreseeable

future. Therefore, the large GP industrial site is currently underutilized and will be abandoned for industrial use in the foreseeable future; and

WHEREAS, Georgia-Pacific has offered its waterfront industrial real property for sale as part of the closing of its industrial operations on the property. This property, and the adjacent Whatcom Waterway, will require significant environmental remediation above industrial use standards for redevelopment; and

WHEREAS, the WFG found that this key piece of waterfront property should be acquired and held in public ownership as its reuse is planned and as it is redeveloped over time. The Port and the City have designated the central waterfront industrial property as the "New Whatcom Special Development Area", hereinafter referred to as "New Whatcom SDA". A map of the New Whatcom Special Development Area is attached hereto as Exhibit "A"; and

WHEREAS, the Port has entered into a preliminary agreement with Georgia-Pacific to acquire all of its Whatcom County property, including the waterfront industrial property. The agreement contemplates that the Port will take responsibility for the environmental remediation of certain known environmental conditions on the Georgia-Pacific property and in the Whatcom Waterway in exchange for transferring the property to the Port; and

WHEREAS, the Port intends to purchase insurance coverage to pre-fund its anticipated environmental remediation costs; and

WHEREAS, the acquisition of the Georgia-Pacific property and environmental remediation to a standard suitable for redevelopment by the Port can only be accomplished if the Port can form strategic partnerships with key government agencies, such as the City, to assist in the redevelopment of the New Whatcom SDA; and

WHEREAS, in response, the City and Port have agreed to form a strategic partnership to redevelop the New Whatcom SDA in the form of (i) direct and early investment in , infrastructure, public access, public open space and marine infrastructure, (ii) participation in the pursuit and receipt of grants and other forms of aid for the redevelopment of the site, and (iii) development of a consolidated public process for permitting mixed-use development of the site (iv) development of environmental protection standards that will insure that development is compatible with and forms a part of the environmental remediation, (v) consolidation of existing parcels and rights of way to accommodate redevelopment and (v) adaptive reuse of historic buildings; and

WHEREAS, the City and the Port recognize the unique and historic opportunity for the citizens of Bellingham, Whatcom County, and the greater Puget Sound region to provide for the redevelopment of the site as a mixed-use development with significant public access

opportunities, all of which will require a higher clean up standard and corresponding cost; and

WHEREAS, the Port and the City have recognized and agreed upon a model for the redevelopment of the New Whatcom SDA. The Port will assume the costs and risks associated with (i) Georgia-Pacific's responsibilities for the environmental remediation of the Georgia-Pacific property and the Whatcom Waterway, (ii) the environmental remediation to a higher standard suitable for redevelopment and (iii) the development of all marine infrastructure. In addition, the Port will provide to the City such property as may be necessary for the development of infrastructure, public access, parks, and open space within the New Whatcom SDA; and

WHEREAS, the City will assume the costs and risks associated with the development of the land side infrastructure and public open space necessary for the redevelopment of the New Whatcom Site consistent with the Environmental Protection Standards ("EPS"), defined below, excluding the environmental remediation risks undertaken by the Port; and

WHEREAS, the Port's ability to assume Georgia-Pacific's environmental liabilities, to fund a higher standard of remediation, to provide the marine infrastructure and to provide the property to the City for infrastructure, public access, parks, and open space will be derived from grants and the sale of the development ready parcels to private developers or public entities. The City's ability to fund the public infrastructure, parks and open space will be derived from existing capital funds, grants, bond financing and levies; and

WHEREAS, the City and the Port agree to make the foregoing commitments to each other and the community. The Port and the City understand and agree that without these commitments, understandings, and investments by the City and the Port it will not be possible to successfully redevelop the New Whatcom SDA as a mixed-use development requiring compliance with a higher regulatory environmental clean up standard; and

WHEREAS, the City and the Port are currently in the process of acquiring property between D Street and the Whatcom Waterway for incorporation in the waterfront redevelopment. In addition, both the City and the Port are potentially liable parties (PLPs) for properties, other than the Georgia-Pacific property, located within the New Whatcom SDA. The Port and the City will work cooperatively to develop separate PLP agreements to resolve the environmental issues involving these New Whatcom SDA liabilities; and

WHEREAS, in order to create an environment that enhances the opportunity for early inbound private investment into the site, the Port and the City have both determined that (i) public access and (ii) new landside and marine infrastructure, including streets, utilities, bulkheads and visitor moorage will have to be built on the Georgia-Pacific and Central Waterfront properties to accommodate redevelopment. Innovative and consolidated planning

and permitting processes will be needed to attract and foster redevelopment interests and carry out the adopted recommendations of the WFG; and

WHEREAS, the Port and the City recognize that successful and timely redevelopment of the property encompassed in the New Whatcom SDA benefits the economic and social welfare of Bellingham and Whatcom County, and represents an historic opportunity for the citizens of Bellingham and Whatcom County to shape the Bellingham waterfront for the next century:

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Port and the City agree as follows:

**ARTICLE II
PURPOSE, NEED, AND MANAGEMENT
OF THE NEW WHATCOM SDA**

1. **New Whatcom SDA.** The Master Interlocal Agreement for the Implementation of the Waterfront Futures Group Recommendations provides that the Port and the City can create development areas of special interest for those areas directly owned in whole or part by either entity. The Port and the City hereby create the New Whatcom SDA as depicted in Exhibit A and subject to the understandings contained in this Agreement. "New Whatcom" is a provisional name pending the branding of the site as provided herein.
2. **Planning Neighborhood and Development Area.** The New Whatcom SDA shall be considered a new and unique development area for the purposes of planning, administration and development.
3. **Project Cooperation and Joint Funding.** Both City and the Port agree that this area is critical to Bellingham's future and that joint cooperation and funding is required as herein specified.
4. **Staffing.** The Port and the City anticipate using existing staff, augmented by outside consultants, to accomplish the purposes of this Agreement. To the extent necessary, the Port and the City will commit staff and financial resources as necessary to accomplish the purposes of this Agreement.
5. **Outside Funding Assistance.** The Port and the City will jointly prioritize and pursue outside funding assistance from federal and state sources to further the goals of this Agreement and allocate resources to secure said funding. For the year 2005, the parties shall each commit a minimum of \$125,000 for a total of \$250,000, for the promotion and acquisition of grants for projects located in the New Whatcom SDA. The parties shall jointly select a consultant and direct its effort through their respective designated representatives.

New Whatcom Special Development Area
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City of Bellingham
CITY ATTORNEY
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The Port shall provide the required contract supervision and management. The City shall pay to the Port within 30 days of delivery of an invoice from the consultant, the City's 50% share of the invoice received from the Consultant. Neither parties' share shall exceed the \$125,000.00 commitment above without further approval of the entity.

6. **Name Branding of the SDA.** The Port and the City recognize the challenges in attracting inbound private capital to the New Whatcom SDA and will jointly fund and develop a marketing strategy for the area that includes naming and "branding" for purposes of accelerating the absorption rate of the property available for private development. For the year 2005, the parties shall each commit a minimum of \$30,000 for a total of \$60,000. The parties shall jointly select a consultant and direct this effort through their respective designated representatives. The Port shall provide the required contract supervision and management. The City shall pay to the Port within 30 days of delivery of an invoice from the consultant, the City's 50% share of the invoice received from the Consultant. Neither parties share shall exceed the \$30,000.00 commitment above without further approval of the entity.

7. **Cooperation with Regulatory Agencies.** The Port and the City will cooperate and support one another's efforts with regulatory agencies to accommodate the redevelopment efforts consistent with the NWDP.

8. **Development Predictability.** The Port and the City will explore options to create development predictability and incentives to further attract private investment within the New Whatcom SDA.

ARTICLE III

NEW WHATCOM SDA DEVELOPMENT PLAN, DEVELOPMENT STANDARDS AND ENVIRONMENTAL PROTECTION STANDARDS CREATION, ADOPTION AND CONSISTENCY

9. **New Whatcom SDA Development Plan.** The Port and the City will jointly develop and fund, a New Whatcom Development Plan ("NWDP") together with the necessary State Environmental Policy Act ("SEPA") documents.

a. The City and the Port shall each commit for the year 2005 a minimum of \$125,000 for a total of \$250,000 to the development of the NWDP. Using these funds, the parties shall jointly select and hire a consultant to assist and facilitate the development of the NWDP. The parties shall jointly direct the consultant through their respective designated representatives. The Port shall provide the required contract supervision and management. The City shall pay to the Port within 30 days of delivery of an invoice from the consultant, the City's 50% share of the invoice received from the Consultant. Neither parties' share shall exceed the \$125,000.00 commitment above without further approval of the entity. Expected expenses include

the cost of a project manager, consultant time and the cost of materials for presentation and documentation.

b. The City and the Port, will seek input and comment from the newly formed Waterfront Advisory Group ("WAG") while preparing the NWDP.

c. The NWDP will also include a detailed capital facilities budget and an anticipated implementation schedule for items i (i) - (vi), below.

d. The City and the Port agree that development of any of the sites created within the SDA shall not require a developer (public or private) to install or pay for any parks and open space, provided however, that nothing shall prevent a developer from electing to install such improvements on their own site.

e. The City shall develop, at its cost, all parking for City-owned infrastructure, such as parks, open space, and public waterfront access.

f. For all other parking, a developer shall choose to either provide its required parking or lease the parking from the City. The City shall be entitled to market based rent for the use of this parking. Nothing herein shall prevent the City from contracting with the Port or a private entity to provide this parking. The City shall not be required to build parking structure(s) to meet developers' parking requirements until bond financing can be obtained or a contractual agreement is reached to provide this parking. However, the City will not require a developer to construct on-site parking facilities to meet their parking requirements as part of a development, so long as the developer has agreed to lease City-provided parking as described above. In the interim, the City will provide temporary parking at market rates.

g. All parks, infrastructure, public open space and parking to be constructed by the City shall be identified in the New Whatcom Development Plan (NWDP).

h. The City and the Port further agree that the NWDP shall be consistent with and harmonious with the Port's remediation plans approved by the Washington State Department of Ecology. Unless agreed to in the NWDP, the City will not impose any additional environmental mitigation or environmental remediation requirements for the development in the SDA.

i. The NWDP will identify and locate, at a minimum the following:

- i. specific land uses and building sites,
- ii. public parks, open space, and public access opportunities,
- iii. public marine and visitor moorage facilities,

iv. marine habitat enhancements,

v. historic resources; and

vi. on and off site infrastructure necessary for development including but not limited to traditional utilities (sanitary sewer, water, gas, electrical, etc.), roads and walkways, telecommunications, storm water treatment, and area wide parking facilities.

j. The Port is responsible for the environmental remediation of certain known environmental conditions on the Port owned property and the Whatcom Waterway, except for the City's compliance with the environmental protection standards in the course of City projects.

10. Timeline for Adoption of NWDP. It is anticipated that the NWDP and the necessary SEPA reviews (completion of a Final Environmental Impact Statement) will be complete no later than December 31, 2005. The parties will work cooperatively during the development of the NWDP to make sure that the NWDP and the parties' existing planning documents, such as the City's Shoreline Master Plan, are consistent. If there are inconsistencies, the parties will initiate the necessary changes to make them consistent. Thereafter, the NWDP and associated SEPA documents will be presented to the Port commission and City Council for consideration during December of 2005. Once adopted by the governing bodies of both the Port and the City, the NWDP shall be appended to this Agreement as Appendix "1."

11. Land Use Plans and Comprehensive Scheme. It is the intent of the Port and the City that the NWDP will be the final land use and shoreline development agreement for the development of the New Whatcom SDA. Therefore, the Parties will initiate and make good faith efforts to complete in 2005, or as soon thereafter as possible, approval of the necessary changes to the existing regulations and plans to implement the NWDP. The parties recognize this is subject to the legislative process and this function can not be surrendered by this Agreement. By way of example, the Port shall promptly amend its Comprehensive Scheme of Harbor Improvements and the City will promptly undertake to amend the City Comprehensive Plan, the City Neighborhood Plan, the City Zoning Code and the City Shoreline Master Program (SMP). The parties will begin the process of adopting these changes to their respective legislative bodies as soon as practical. Any shoreline development permit shall be consistent with the adoption and approval of the NWDP. Once approved it is understood that subsequent land divisions may require subdivision approvals, such as binding site plans, condominiums, lot line adjustments, or other divisions allowed by RCW 58.17. Such approvals shall be consistent with this Agreement and the NWDP.

12. **Development Agreement.** The approved NWDP shall be a "Development Agreement" as the term is defined in the RCW 36.70B and a binding contract between the City and the Port.

13. **Development Standards.** As the NWDP is being jointly developed, the City and the Port will coordinate any required plans and specific regulations to facilitate redevelopment within the New Whatcom SDA. The development standards will recognize the need to foster mixed development consistent with an urban downtown environment, emphasizing reduced, limited or eliminated setbacks, providing for building heights in excess of three stories where appropriate, defining landscape features and historic building considerations, and providing for area wide joint parking facilities constructed by the City (or an entity designated by the City for this purpose) as part of the City's infrastructure requirements as specified in section 9(e) and (f) above. The Port and the City agree that there shall be no park or open space requirements imposed upon any lot or development. The development regulations and standards will be included in the NWDP and shall thereafter be attached hereto as Appendix "2".

14. **Environmental Protection Standards.** All development activities, whether private or public, within the New Whatcom SDA will be required to comply with the environmental protection standards ("EPS") that are developed by the Port in consultation with the City and approved by the Department of Ecology as part of the remediation requirements. To this end, the EPS are conceived to attempt to assure that all development is undertaken properly with the same goals and requirements and in a manner consistent with all environmental remediation requirements. In addition, it is anticipated that the development itself will be part of the environmental remediation. The EPS shall thereafter be attached hereto as Appendix "3".

15. **Status Quo Until Agreement.** Until the parties reach agreement on the NWDP as a Development Agreement and adopt the appropriate changes to the plans and regulations noted above or for a period of twenty (20) years which ever is shorter the following conditions shall apply to Port owned property within the New Whatcom SDA:

- a. Except as requested by the Port, or as required by law, the City shall not initiate, consider or adopt a change to the existing allowed uses and related development standards as set forth in the existing zoning, shoreline regulations and related planning documents. It is the intent of the Parties that the use allowed within the SDA continue as heavy impact industrial uses without any new restrictions or regulations until such time as the NWDP as a Development Agreement and related changes to plans and regulations are adopted or the expiration of the twenty (20) years noted above, whichever is sooner.

b. At the Port's reasonable request, the City shall not unreasonably refuse to terminate, remove or alter any easement, reserved easement, right of way or reversionary right of way within the SDA.

c. The City shall not impose or charge a fee for or require any buffer, open space or parks for heavy impact industrial uses of the SDA.

d. The Parties agree that the Port shall be the SEPA lead agency for any development in the SDA, except for any City projects.

16. **Challenge to the Status Quo Agreement.** The Port and the City agree that the twenty (20) year term contained in paragraph 15 is reasonable and necessary to allow the Port to recover the public investment in the SDA. However, the Port and the City agree that a Court of competent jurisdiction may modify the twenty year (20) term or any condition of the status quo agreement reflected in paragraph 15 above to the extent necessary to preserve legality of the status quo agreement.

ARTICLE IV NEW WHATCOM SDA PERMITTING PROCESS

17. **Building Permit Predictability.** The Port and the City recognize that consistent and predictable interpretations of the applicable building and development regulations, and an expedited process (beyond the normal City process) for necessary land development approvals is critical to creating an atmosphere favorable to obtaining inbound private investments in the New Whatcom SDA and for the public entities to obtain a reasonable and timely return on their investments in the New Whatcom SDA. The Port and the City will work cooperatively to implement processes to ensure building permit predictability, consistency, and expediency by the end of 2005. If, after adoption, the Port or the City believes that such processes are not providing the necessary predictability, consistency, and expediency for success of the redevelopment of the site, then the parties shall meet and may adopt new and alternate processes to achieve the necessary predictability, consistency, and expediency.

ARTICLE V EARLY ACTIONS BY THE PORT AND THE CITY

18. **Development Phasing.** The New Whatcom SDA is expected to be redeveloped in phases, due to its size and the development absorption rate. In doing so, public investments can be better managed and phased consistent with redevelopment. The parties intend for redevelopment to commence within the property formerly referred to as the Central Waterfront area with the balance of the property being developed inland outward. In the interim and after the approval of the NWDP, properties will be used for existing land uses

such as light and marine industrial uses especially within existing industrial buildings consistent with the approved phasing plan. Phasing in this manner will avoid development gaps or voids of services and infrastructure. The expected phasing of the marine infrastructure, landside infrastructure, visitor moorage, parks, parking, open space and areas available for development will be included in the NWDP.

19. **Early Action Projects.** The Port and the City recognize the need to show early and continued progress towards achieving the goals of this Agreement. This is necessary to create project momentum, build predictability, create synergy in the redevelopment of the site, and enhance public awareness, understanding, confidence and support for the public and private investment to redevelop the site. The Early Action projects will include early environmental remediation projects, early infrastructure design and development, and the preliminary selection of sites for sale to public or private entities, institutions and/or developers. To this end, the parties agree to attempt to identify early action projects as part of the NWDP, or as a separate Early Action project agreement. Early Action Projects shall not be subject to section 18 above, unless identified and included in the NWDP.

20. **Approvals of Early Environmental Remediation Actions.** The Port and the City recognize that early environmental remedial actions will require the approval of state and federal agencies. In this regard, the Port will work diligently with the state and federal agencies with jurisdiction to accomplish this task

ARTICLE VI PORT AND CITY RESPONSIBILITIES FOR NEW WHATCOM SDA

21. **Landside Infrastructure Parks and Public Access Development.** The City agrees to design, construct, and maintain at its cost landside public infrastructure as set forth in the NWDP. For the purposes of this Agreement and the NWDP, landside public infrastructure means and includes the following:

- a. streets, curbs, gutters, sidewalks, lighting and traffic controls
- b. water and sewer,
- c. storm water treatment and conveyance facilities,
- d. area wide parking as described in section 9(e) above,
- e. public parks, open space, and public access

The above various elements of public infrastructure will be outlined and the construction schedule set forth in the jointly adopted Capital Facilities and Infrastructure Plan included as part of the NWDP.

22. **Marine Infrastructure and Moorage Facilities.** The Port will be responsible for design, financing, maintaining, permitting, developing, and operating public marine infrastructure, marinas and visitor moorage facilities as specified in the NWDP.

- a. **New Marina.** It is anticipated that these facilities will include a new downtown marina within the existing ASB treatment lagoon. The Port will design the facility to maximize connectivity to the Downtown and Old Town commercial areas.
- b. **Visitor Moorage.** It is anticipated that the marine facilities will also include visitor moorage both within the ASB and adjacent to the Whatcom Waterway along the existing Georgia-Pacific piers.
- c. **New boat launch.** Facilities may also include a new public boat launch facility. If so provided, the City agrees that the public boat launch located at Squalicum Harbor may be reduced in size or permanently eliminated at the discretion of the Port upon the installation and opening of a new public boat launch located within the New Whatcom SDA. The City and the Port will execute any necessary documents or agreements to relieve the obligation to maintaining the existing Squalicum Harbor Boat launch.
- d. **Bulkhead repair and replacement.** It is anticipated that certain publicly owned bulkheads within the New Whatcom SDA may require repair and/or replacement. The Port will undertake the repair and/or replacement of such publicly owned bulkheads as it determines to be necessary for their intended purposes as set forth in the NWDP. The City agrees to process and issue the related and necessary permits for such repairs as expeditiously as possible consistent with legal requirements, other provisions of this Agreement, and other related Interlocal Agreements between the Port and the City.

This marine infrastructure will be constructed as set forth in the jointly adopted Capital Facilities and Infrastructure Plan included as part of the NWDP.

23. **Real Property Title Issues.** The New Whatcom SDA is currently encumbered by historical reservation of easements and reversionary interests within vacated rights of ways in favor of the City. These historical interests are in many cases obstacles to rational redevelopment of New Whatcom. The Port and the City will identify these historical interests in the NWDP. To facilitate redevelopment these historical interests will be removed at no cost to the Port. The Port and the City recognize the goal of relieving the SDA of reserved easements, rights of ways, and similar encumbrances and other requirements to allow the implementation of the NWDP and the creation of new rights of ways, and/or easements for utilities, and transportation corridors.

24. **New City Property Rights.** During redevelopment, the City will be conveyed the appropriate property rights, which may include the fee simple interest, for the property containing public infrastructure and public parks and access areas as set forth in the NWDP. Except for property necessary for parking facilities specified in section 9(f) above, the Port

will provide and convey these property rights to the City at no cost following construction of these public facilities including public infrastructure by the City as specified herein and consistent with the NWDP. The cost of the property, if any, for the parking facilities specified in section 9(f) above will be determined in the NWDP taking into account revenue streams from parking users. All such public improvements, including infrastructure, public parks, open space, capital facilities, and public access improvements shall be completed in a manner consistent with the environmental development standards set forth in this Agreement. To the extent allowed by law, the Port will indemnify the City and the Port will be solely responsible (as between the City and the Port only) for any environmental liability relating to historical environmental conditions on these properties; however, the City must comply with the EPS at its cost. This indemnification shall not be transferable or assignable by the City, except to any entity created by the City for the purpose of developing the New Whatcom SDA.

25. Impact or Latecomers Fees. The parties find that the redevelopment of this site is in the community's best interest and provides a broad general public purpose. To stimulate private investment in the site and to promote redevelopment necessary to achieving the public benefit and purpose of the redevelopment of the site, reduction of the impact and latecomers fees within the SDA is appropriate, to the extent allowed by law. The Parties also acknowledge that the City cannot control the latecomer and impact fees legally assessed by other individuals or entities within the site. The Parties shall cooperate in approaching other governments to similarly agree to adjusting impact fees. Accordingly, to the extent permitted by law, the City will not assess impact or latecomers fees for:

- a. municipal infrastructure that the City installs within the site for the general public benefit, as determined by the City. The general benefit public infrastructure shall be identified in the New Whatcom SDA Development Plan; and
- b. municipal infrastructure that is paid for with state or federal grant money to the extent of the grant funding; and
- c. properties developed by the Port for Port operations (i.e. the marina and related upland areas, port offices, etc.); and
- d. Specific areas identified in the NWDP for early development and the attraction of private inbound investment to encourage the successful redevelopment of the SDA thereby providing increased assessed valuations. In addition, the Parties may agree on specific areas for reduced and/or scaled latecomer and/or impact fee.

26. Groundwater. The proper management of ground and surface water is an important environmental component of the initial construction phases of the environmental remediation and redevelopment of the New Whatcom SDA. Accordingly, during the initial construction phases of the environmental remediation and redevelopment, the City will accept ground or

surface water into its sewer system subject to the extent allowed by law and subject to the following conditions:

- a. The City, in its determination, which shall not be unreasonably withheld, may take such ground and surface water as is acceptable and authorized under the City's applicable permits, including its NPDES permit, and at such levels as is within the system's capacity.
- b. In compliance with law, the Port is responsible for obtaining approval from the Department of Ecology and any other pertinent state and/or federal agencies for the acceptance of said water into the City's sewer system if such approval is required.
- c. In the NWDP, the Port and the City will agree to a rate reflecting the actual incremental costs of such treatment, to the extent allowed by law.
- d. The Port will, to the extent permitted by law, indemnify the City and hold it harmless against any claims or suits arising from the City accepting the ground and surface water under this provision, unless and to the extent the claim or suit arises from the City's negligence.
- e. The acceptance of the ground or surface water into the City's sewer system is for initial construction and clean up phases. All connections shall be considered temporary

27. Payment In Lieu of Taxes by an Entity Not Subject to Property Taxes. If a non property tax paying entity seeks to acquire any property within the NWDP area, the Port shall prior to selling the property negotiate either a capital infrastructure contribution or a payment in lieu of taxes that will reasonably compensate the City for the anticipated lost future property tax revenue for the property being transferred to the non property tax paying entity. The NWDP shall include a process and/or methodology for determining the capital infrastructure contribution or the payment in lieu of taxes that will reasonably compensate the City for the anticipated lost tax revenue.

ARTICLE VII MISCELLANEOUS TERMS

28. Reliance on Mutual Commitments. The Port and the City acknowledge that their mutual commitments herein are fundamentally necessary to each party proceeding with its commitments herein. The parties recognize and acknowledge that their commitments and agreements to undertake certain actions herein are necessary and critical to the successful redevelopment of the site and are fundamental to the strategic partnership for the

redevelopment of the site. Each party is relying on the timely and full performance of the other in the performance of their obligations undertaken herein.

29. **Georgia Pacific Purchase and Sale Agreement.** If the Port, for any reason, fails to conclude a transaction with Georgia-Pacific for the acquisition of the Georgia-Pacific property, this Agreement shall have no force or effect and shall be deemed null and void. In this regard, the City is undertaking its commitments herein with the knowledge that both parties' obligations herein are contingent upon the Port in its own and sole discretion deciding to proceed with the acquisition of the Georgia-Pacific property.

30. **Administration of this Agreement.** This 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. 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 contracts entered into in furtherance of this Agreement.

31. **Joint Funding.** In those instances where the Port or the City will contract for services provided in furtherance of this Agreement and the Port and the City have agreed to share the expense, the Port and the City shall set forth their respective financial obligations in writing prior to executing the contract.

32. **Document Reviews.** The Parties shall further cooperate by sharing all relevant information, including environmental documents, to the extent allowed by law.

33. **Term of Agreement.** Except as may be otherwise stated herein, the term of this Agreement shall commence on January 1, 2005, and shall continue in effect until December 31, 2025.

34. **Amendment.** Representatives of the City and the Port will meet from time to time to recommend amendments to this Agreement or the accompanying appendices. The Port and the City recognize that such proposed amendments shall be reduced to writing and taken before the Port Commission or City Council for approval.

35. **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.

36. **Severability.** In the case of a determination of invalidity of one or more provisions, City and Port representatives will meet and work to resolve the issue to accomplish the purpose of this Agreement.

37. **Additional Acts.** The Port and the City recognize and expect that additional acts will be required to achieve the intent of this Agreement. Therefore, to the extent authorized by.

New Whatcom Special Development Area
Interlocal Agreement - 14

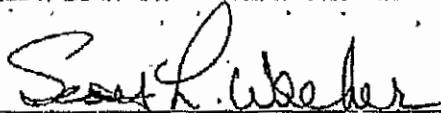
City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

law, the Port and the City commit to take whatever additional acts that may be reasonably required to achieve the purposes of this Agreement.

38# Neutral Authorship. Each provision of this 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 by each government noted below in an open public meeting on the date noted.

THE PORT OF BELLINGHAM



Dated: 12/14/04

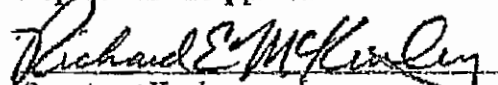
By:

Commission President

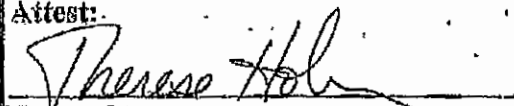
DATED this 4th day of January, 2005, for the CITY OF BELLINGHAM.


Mayor

Departmental Approval:


Department Head

Attest:


Finance Director

Approved as to Form:

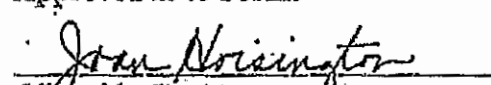

Office of the City Attorney

EXHIBIT LIST

EXHIBIT "A"	MAP DEPICTING NEW WHATCOM SDA	TO BE ADDED PRIOR TO EXECUTION
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APPENDIX LIST

APPENDIX 1	NEW WHATCOM DEVELOPMENT PLAN	UPON ADOPTION BY CITY AND PORT - EXPECTED BY DECEMBER 31, 2005
APPENDIX 2	DEVELOPMENT STANDARDS	UPON ADOPTION BY CITY AND PORT - EXPECTED BY DECEMBER 31, 2005
APPENDIX 3	ENVIRONMENTAL PROTECTION STANDARDS	UPON APPROVAL BY STATE AGENCIES

PAVLEY BELLINGHAM, WA 98225-1600 FAX (360) 676-6903 CITY OF BELLINGHAM, WA 98225-1600 FAX (360) 676-6903

New Whatcom Special Development Area
Interlocal Agreement - 16

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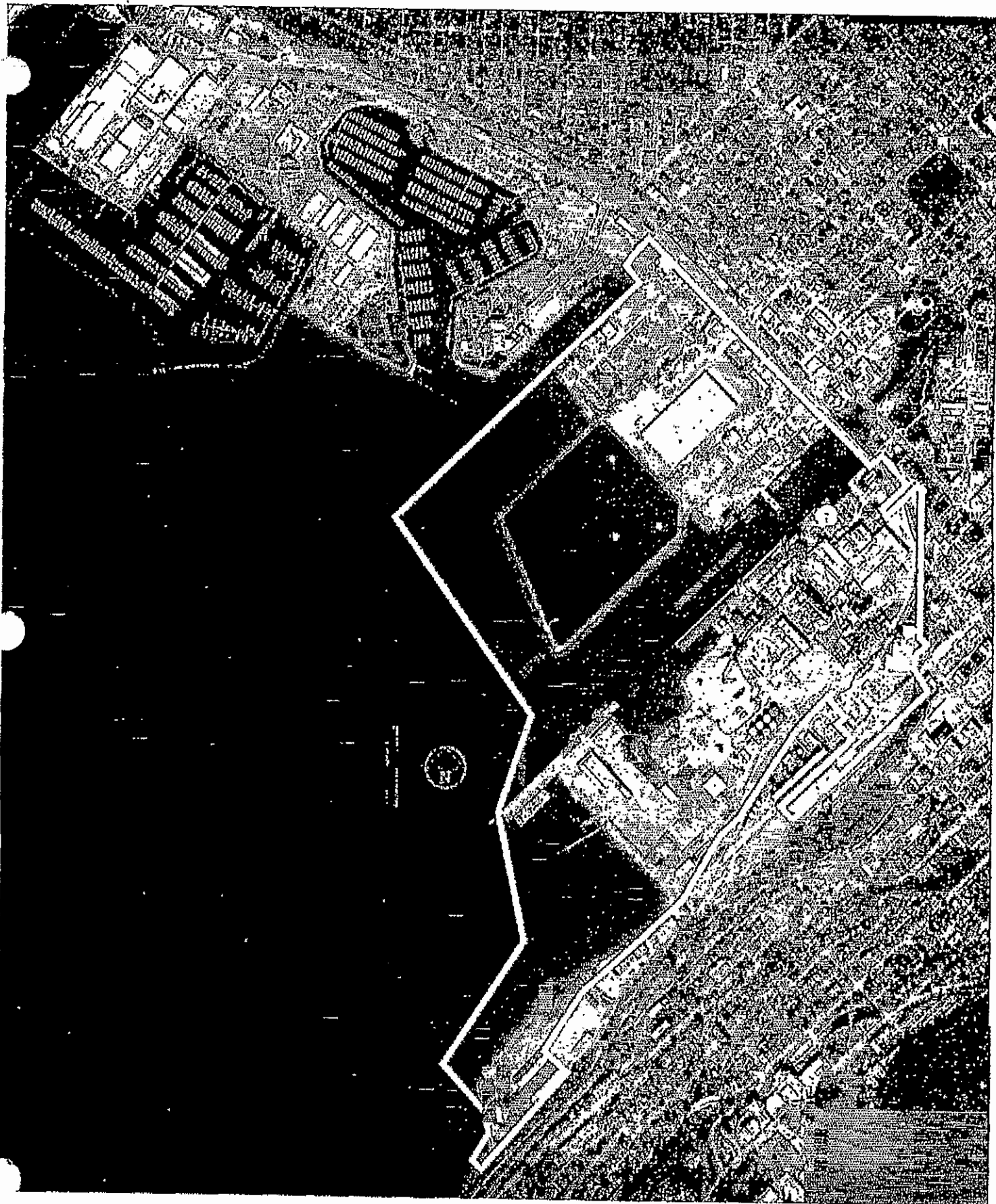


EXHIBIT "A"